(1)

No. 99-5316-CFX Title: Robert E. Prunty, Petitioner
v.
W. Brooks, et al.

Docketed: July 21, 1999 Court: United States Court of Appeals for the Sixth Circuit

Entry	Date	Proceedings and Orders
	Jul 12 1999	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due August 20, 1999)
	Jul 12 1999	Motion of petitioner for leave to proceed in forma pauperis filed.
	Sep 2 1999	DISTRIBUTED. September 27, 1999
	Oct 4 1999	REDISTRIBUTED. October 8, 1999
	Oct 12 1999	Motion of petitioner for leave to proceed in forma pauperis DENIED. See Rule 39.8. Petitioner is allowed until November 2,1999, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court. Dissenting opinion by Justice Stevens Opinion per curiam. (Detached opinion.)

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EDITOR'S NOTE

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NO._____

99-5316

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

ROBERT E. PRUNTY, PRO SE PETITIONER,

v.

W. BROOKS, et al., Respondents.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Petitioner asks leave to file the attached petition for a writ of certiorari to the United States Court Of Appeals For The Sixth Circuit, without prepayment of costs and to proceed in forma pauperis.

[X] The Petitioner was granted permission to proceed in forma pauperis in the district court on May 19, 1995;

but have not been allowed to proceed in forma pauperis on appeal in this action by the district court and the United States Court Of Appeals For The Sixth Circuit.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Robert E. Prunty, #184-764
(Signature)

Supreme Court, U.S.
FILED
JUL 1 2 1999
OFFICE OF THE CLERK

9/pp

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Robert E. Prunty, am the petitioner in the above-entitled case. In support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

I further swear that the responses I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? Yes ___ No X

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of salary or wages per month which you received. 9/1984; $500.00

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other sources? Yes ___ No X

a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or have a checking or savings account? Yes ___ No X

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing) Yes ___ No X

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons. No One

I declare under penalty of perjury that the foregoing is true and correct.
Executed on: 7/6, 1999.

Robert E. Prunty, #184-764
(Signature)

NO. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

ROBERT E. PRUNTY, PRO SE PETITIONER,

v.

W. BROOKS, et al., Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

COUNSEL OF RECORD:

Todd R. Marti (0019260)
Office of the Attorney General
Corrections Litigation Section
140 E. Town Street, 14th Floor
Columbus, Ohio 43215-6001
(614) 644-7233

Robert E. Prunty,# 184-764
Belmont Correctional Camp
P.O. Box 540
St. Clairsville, Ohio 43950
(740) 695-5169
PRO SE PETITIONER

99-5316
Prunty

NO. _____

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IN THE

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OCTOBER TERM, 1999

ROBERT E. PRUNTY, PRO SE PETITIONER,

v.

W. BROOKS, et al., Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Now comes Petitioner in Pro-Se pursuant to 28 U.S.C. 1254(1); Rule 13, 14, S. Ct. Rules; hereby requests the Honorable Court to grant his writ of certiorari in the above-entitled case for the reasons stated in the petition that follows.

Respectfully Submitted,

Robert E. Prunty

Robert E. Prunty,# 184-764
Belmont Correctional Camp
P.O. Box 540
St. Clairsville, Ohio 43950
Petitioner, Pro-Se
(740) 695-5169

QUESTIONS PRESENTED

1. Did the federal courts below erred when they denied Petitioner the right to a trial by jury after Petitioner filed a motion for reconsideration and a trial by jury?

2. Did Respondents violate Petitioner's right of access to the courts and Petitioner's First and Fourteenth Amendment rights to the United States Constitution and caused Petitioner to suffer actual injury, extreme prejudice when Respondents refuse to provide requested legal materials to Petitioner in segregation causing Petitioner to miss pertinent court dead-line?

3. Was the conduct report that was written upon Petitioner by a Respondent in this action, written as a retaliatory and conspiring act to obstruct justice; to cause Petitioner hardship and to aid in causing Petitioner to miss said court dead-line?

4. Did the federal courts below erred when they refused to apply the imminent danger exception to PLRA 3 strikes under 28 U.S.C. 1915(g) in this case when Petitioner submitted affidavits to the federal courts below informing them that Petitioner was under imminent danger of serious physical injury?

LIST OF PARTIES

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

The Petitioner is Robert E. Prunty,#184-764, a Pro-Se inmate currently incarcerated at Belmont Correctional Camp located in St. Clairsville, Ohio.

The Respondents are:

W. Brooks, Guard employed at Marion Correctional Institution located in Marion, Ohio, at the time this original action were filed;

Mayhew, Guard employed at Marion Correctional Institutin (hereinafter, MCI);

Kennedy, Sergeant employed at MCI;

Pressley, Sergeant employed at MCI;

Shirley A. Rogers, Warden employed at MCI.

Randy Shears, Case Manager, employed at MCI.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

ROBERT E. PRUNTY, PRO SE PETITIONER,

v.

W. BROOKS, et al., Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner prays that a writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States Court of Appeals For The Sixth Circuit appears at Appendix A to the petition and appears to be unpublished. The opinions of the U.S. Court of Appeals For The Sixth Circuit is reported at F. 3d.

The opinion of the U.S. District Court For The Northern District of Ohio appears at Appendix B to the petition and is reported at F. 2d, but appears to be unpublished also.

JURISDICTION

[X] For cases from federal courts:

The date on which the U.S. Court Of Appeals For The Sixth Circuit rendered a decision in this case was on June 15, 1999.

[X] No petition for a rehearing was filed in this case.

The jurisdiction of the Honorable Court is invoked under 28 U.S.C. 1254(1); and Rule 13, 14, S. Ct. Rules.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves AMENDMENT ONE to the Constitution of the United States--Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances***or the right of the people peaceably to assemble, and to petition the Government for a redress of Grievances; Also, AMENDMENT SEVEN to the Constitution of the United States--In Suite at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law. Also,

AMENDMENT EIGHT to the Constitution of the United States prohibiting cruel and unusual punishment; "Excessive bail shall not be required, nor cruel and unusual punishment inflicted;" And,

AMENDMENT FOURTEEN to the Constitution of the United States;

Section 1. All persons born or naturalized in the United States, and subjected to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article. and enforced by title 42 U.S.C. Section 1983, United States Code; every person who, under color of any statute,

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED, CONTINUED

ordinance, regulation, custom, or usuage, of any State or Territory of the District Of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress. 42 U.S.C. Section 1983 (1982).

STATEMENT OF THE CASE

On May 22, 1995, Petitioner filed this action in the U.S. District Court For The Northern District of Ohio, under 42 U.S.C. 1983, 1985(2)(3), 1986; 28 U.S.C. 1343(3)(4); with a "JURY DEMAND" against W. Brooks, Guard employed at Marion Correctional Institution (hereinafter, MCI), and five(5) other prison officials employed at MCI and working under "Color of State Law," suing them in their "individual and Official capacities" for damages in the amount of one million dollars for intentionally, willfully and knowingly violating Petitioner's federal protected rights; thus causing Petitioner to miss a pertinent Court deadline; and causing Petitioner to suffer actual injury, extreme prejudice, grief and intentional infliction of pain and emotional distress. Appendix D.

> "Petitioner respectfully requests the Honorable Court to allow him to file this action out-of-Rule by omitting the pleadings, motions, etc, from him and Respondents from the Appendix because of being too voluminous--and would entail undue hardship upon Petitioner because Petitioner is indigent and proceeding in forma pauperis, if it please the Honorable Court. However, Petitioner does not want this request by the Petitioner to cause him injuries, prejudice or harm in rendering a fair and just decision by the Honorable Court."

Counsel for Respondents filed an ANSWER FOR DEFENDANTS' SHIRLEY ROGERS, RANDY SHEARS, ROGER MAYHEW on 7/24/95.

Counsel for Respondents filed a MOTION FOR SUMMARY JUDGMENT on 1/26/96.

Counsel for Respondents filed a MOTION TO SUPPLEMENT RECORD WITH ORIGINAL AFFIDAVIT on 1/30/96, which was granted by the District Court on 2/8/96. Or granted 2/13/96.

Publisher's Note:

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Appendix.

Counsel for Petitioner filed a RESPONSE to Respondents second motion for Summary Judgment on 9/27/96. Omitted from Appendix.

Counsel for Respondents filed a REPLY to Petitioner's second motion for Summary Judgment on 10/9/96. Omitted from Appendix.

On 6/17/97, U.S. Magistrate Judge Vernelis Armstrong filed a MEMORANDUM OPINION AND DECISION denying Respondents second motion for Summary Judgment. Appendix-B.

The CIVIL DOCKET FOR CASE #: 95-CV-7308 (Appendix-E) this action will reveal that all settlement scheduled dates were vacated, and counsel for Respondents filed a third motion for Summary Judgment on 1/9/98. Omitted from Appendix.

Counsel for Petitioner filed a OPPOSITION to Respondents third motion for Summary Judgment on 1/28/98. Omitted from Appendix.

Counsel for Respondents filed a REPLY to Petitioner's OPPOSITION to Respondents third motion for Summary Judgment on 2/13/98. Omitted from Appendix.

On July 22, 1998, U.S. Magistrate Judge Vernelis Armstrong filed a MEMORANDUM OPINION AND DECISION granting Summary Judgment to all of Respondents claims. Appendix-B.

On 8/5/98, Petitioner filed a MOTION FOR RECONSIDERATION AND A TRIAL BY JURY pursuant to Rule 38, 39, Federal Rules of Civil Procedure; 28 U.S.C. 1404, 1861, 1873, 1915(g) (Appendix-D) and notified the District Court that:

> "PLEASE NOTE" PLAINTIFF ROBERT E. PRUNTY,NO. 184-764, IS NOW REPRESENTING HIMSELF IN PRO SE IN THIS ACTION."

Id. at Appendix-D,"MOTION FOR RECONSIDERATION AND A TRIAL BY JURY", paGE 3.

On January 6, 1999, U.S. Magistrate Judge Vernelis Armstrong filed a MEMORANDUM DECISION AND ORDER denying Petitioner's MOTION FOR RECONSIDERATION AND A TRIAL BY JURY. Appendix-B.

Petitioner filed a timely appeal to the U.S. Court of Appeals For The Sixth Circuit, and on February 10, 1999, U.S. Magistrate Judge Vernelis Armstrong filed an ORDER denying Petitioner's motion to proceed in forma pauperis on appeal. Appendix-B. And because of 3 strikes under PLRA and 28 U.S.C. 1915(g).

The CIVIL DOCKET FOR CASE #: 95-CV-7308 (this case) (Appendix-E) should include all proceedings/events in the District Court.

On April 13, 1999, The U.S. Court Of Appeals For The Sixth Circuit dismissed this appeal for want of prosecution. Appendix-A.

On April 27, 1999, Petitioner submitted a PERMISSION TO FILE A WRIT OF MANDAMUS (Appendix-C) to the Sixth Circuit Court Of Appeals; and a MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS (Omitted from Appendix) pursuant to Rule 21, Federal Rules Of Appellate Procedure; 28 U.S.C. 1651; 28 U.S.C. 1915(g) (Appendix-C).

On June 15, 1999, The U.S. Court Of Appeals For The Sixth Circuit dismissed Petitioner's permission to file a writ of mandamus as frivolous. (Appendix-A); and also ORDERED in their ORDER of June 15, 1999, that:

> "It therefore is ORDERED that the clerk not accept for filing any future petitions for mandamus, prohibition, habeas corpus, or similar original actions submitted by the petitioner if such petition or original action pertains to the requirements of 1915 (g) or the payment of filing fees in the district court or this court." Id. at Appendix-A, "ORDER filed June 15, 1999, page 3."

As stated previously in this petition, that, a court appointed attorney took over this action on July 17, 1996 (Appendix-H); but the last motion filed in the District Court was filed by Petitioner, Pro-Se. Id. at Appendix-D, "MOTION FOR RECONSIDERATION AND A TRIAL BY JURY," page 3.

Petitioner did not request appointment of counsel in the U.S. Court Of Appeals For The Sixth Circuit and the Sixth Circuit did not appoint counsel to represent Petitioner in this action.

Thus, this PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, ensued.

REASONS FOR GRANTING THE PETITION

The Petitioner believes that the U.S. District Court For The Northern District of Ohio and the United States Court Of Appeals For The Sixth Circuit both erred when they refused to grant Petitioner a trial by Jury when the Petitioner demanded a trial by Jury in the original 1983 Civil Rights complaint, (Appendix-D); and also filed a MOTION FOR RECONSIDERATION AND A TRIAL BY JURY in the U.S. District Court. Appendix-D.

The Sixth Circuit itself in Brandenburg v. Cureton, 882 F. 2d 211 (6th Cir. 1989) characterized the jury as the final arbiter of the question of qualified immunity, in certain cases, wherein they stated:

> "If the jury determines that [Defendant] fired on plaintiff without a belief that someone was in danger of serious bodily injury, then as a legal matter no reasonable officer could believe that such gun fire would not violate another's Constitutional rights. On the other hand, if the jury believed [Defendant's] version of the facts, he would be entitled to qualified immunity." Wood v. Strickland, 420 U.S. 308 (1975), rejected

absolute immunity if acted in a quasi—judicial capacity.

See United States Constitution Amendment Seven, which states:

> "So long as this amendment stands, right to jury trial should not be rationed, nor should particular issues in particular types of cases be treated differently from similar issues in other types of cases." Connell v. Sears, Roebuck & Co., C.A. Fed. 1983,

722 F. 2d 1542; The Court also stated:

> "While historically Seventh Amendment was intended to preserve right to jury trial as it existed in 1791, guarantees afforded have been interpreted to encompass not merely suits which common law recognizeed among its old settled proceedings, but suits in which legal rights are to be ascertained and determined, in contradistinction to those where equitable rights alone are recognized and equitable remedies are administered." Ginberg v. Tauber,

D. C. App. 1996, 678 A 2d 543, Certiorari denied, 117 S. Ct. 738, 136 L. Ed. 2d 677; see 28 U.S.C. 1861, 1873; Rule 38, 39, Federal Rules Of Civil Procedure.

See also, Dolence v. Flynn, 628 F. 2d 1280, 1282 (10th Cir. 1980); U.S. Const. Amend. 7, 14.

The Petitioner also believes the federal Courts below also obstructed justice and violated his civil rights even moreso when these courts refused to grant Petitioner a jury trial. 42 U.S.C. 1983 , 1985(2), 1986; Parratt v. Taylor, 451 U.S. 527, 535, 101 S. Ct. 1908, 1913, 68 L. Ed. 2d 420 (1981); because these federal Courts deprived Petitioner of rights, privileges and immunities guaranteed under the United States Constitution. Id.

Petitioner further believes that the federal Courts below erred when they refused to allow him to proceed in forma pauperis on appeal in this action. Roberts v. United States District Court, 339 U.S. 844, 845, 70 S. Ct. 954, 955, 94 L. Ed. 1326 (1950) (Per curiam) (denial of motion to proceed in forma pauperis is an appealable order);

and that all of Petitioner's previous lawsuits that was dismissed as frivolous, malicious or fail to state a claim for relief; though most were filed prior to enactment of PLRA April 26, 1996 amended 28 U.S.C. 1915(g); provided the Courts with claims and documents that Petitioner's life and safety were in jeopardy from the retaliations of prison officials working under color of State law for exercising his right of access to the Courts; and these lawsuits filed prior to PLRA'S 3 Strikes law and 28 U.S.C. 1915(g) should never have been dismissed as legally frivolous, malicious or failed to state a claim for relief by the District Courts. cf. Neitzke, 490 U.S. at 329, 109 S. Ct. 1827—,
"Subsequent court decisions have established "that not all unsuccessful claims are frivolous." Id.

In addition, if the federal District Courts had granted Petitioner a trial by jury and as demanded in the previously filed 1983 civil rights complaints, then

perhaps none of these previous filed 1983 civil rights complaints would have been dismissed as legally frivolous, malicious or failed to state a claim for relief. U.S. Const. Amend. 7, 14.

In this action, Petitioner submitted affidavits of EXHIBITS-4 and 5, when Petitioner submitted his PERMISSION TO FILE A WRIT OF MANDAMUS to the Sixth Circuit Court Of Appeals on 4/27/99, to support his claims that he was under imminent danger of serious physical injury. Appendix-C, "EXHIBITS-4 and 5." Whereas, the U.S. Court Of Appeals should have allowed Petitioner to to proceed in forma pauperis on appeal in this action under 28 U.S.C. 1915(g); Rider v. Louw, 957 F. Supp. 983, 986 (E.D. Mich., 1997); Gibbs v. Roman, 116 F. 3d 83 (3rd Cir. 1997), "3rd Cir. Applies "Imminent Danger" Exception to PLRA 3 Strikes."

The United States District Court For The Northern District of Ohio and the United States Court Of Appeals For The Sixth Circuit are also aware of other supporting documentation of affidavits etc that Petitioner have submitted to support his claims that he is under imminent danger of serious physical injury. e. g., EXHIBITS- 1 through 8 (Id. at Appendix-F, "1,2,3,6,7,8") will further reveal to the federal courts below that Petitioner is under imminent danger of serious physical injury. And the federal courts below should not wait for Petitioner to have a tragic incident before allowing Petitioner to proceed in forma pauperis on appeal. Burton v. Livingston, 791 F. 2d 97, 100 (8th Cir. 1986) ("The day has passed when an inmate must show a court the the scars of torture in order to make out a complaint.").

In this particular case, the federal Courts below seems to want the Petitioner to have a tragic incident or to sustain great serious injury before

they allow Petitioner to proceed in forma pauperis pursuant to 28 U.S.C. 1915 (b)(1) and (2); McGore v. Wrigglesworth, 114 F. 2d 601 (6th Cir. 1997). When, in fact, the federal Courts below, should not await for a tragic incident to occur to Petitioner in order to grant Petitioner relief under 28 U.S.C. 1915 (g) as long as Petitioner present any affidavits of documentation that reveal that Petitioner is under imminent danger of serious physical injury and or is being treated with deliberate indifference while incarcerated. Helling v. McKinney, 113 S. Ct. 2475, 2481 (1993); U.S. Const. Amend. 8, 14; Burton v. Livingston, 791 F. 2d 97, 100 (8th Cir. 1986) ("The day has passed when an inmate must show a court the scars of torture in order to make out a complaint.");

Rider v. Louw, 957 F. Supp. 983, 986 (E.D. Mich., 1997). And that Petitioner believes the U.S. Court Of Appeals For The Sixth Circuit erred by denying Petitioner's writ of mandamus (Appendix-C) and by dismissing Petitioner's writ of mandamus as frivolous (Appendix-A); In Re Benedectin Products Liability Litigation, 749 F. 2d 300, 303 (6th Cir. 1984); Kerr v. U.S. District Court, 426 U.S. 394, 402, 96 S. Ct. 2123, 48 L. Ed. 2d 725 (1976); and that the Sixth Circuit Court Of Appeals should have granted Petitioner the relief sought in his writ of mandamus; 28 U.S.C. 1651, 1915(b)(1)(2), 1915(g); Rule 21, Federal Rules Of Appellate Procedure; by allowing Petitioner to proceed in forma pauperis on appeal in this action.

Petitioner further believe that the U.S. Court Of Appeals erred, abused their discretion, violated Petitioner's due process rights, improperly obstructed justice and violated Petitioner's adequate, effective and meaningful access to the courts by making an unfair decision in their ORDER filed June 15, 1999, which states:

> "It therefore is ORDERED that the clerk not accept for filing any future petitions for mandamus, prohibition, habeas corpus, or similar original actions submitted by the petitioner if such petition or original action pertains to the requirement of 1915 (g) or the payment of filing fees in the district court or this court." Id. at Appendix-A, "ORDER filed June 15, 1999, page 3." See U.S. Const. Amend. 1 and 14; 42 U.S.C. 1983, 1985(2); 28 U.S.C. 1915(g); Bounds v. Smith, 430 U.S. 817, 824, 828 (1977) (Prisoners have Constitutional right to adequate, effective, and meaningful access to courts to challenge violations of Constitutional rights);

Johnson v. Avery, 393 U.S. 483, 485 (1969) (Prisoners access to courts may not be denied or obstructed);

Wolff v. McDonnell, 418 U.S. 539, 579 (1974).

In addition, to deny Petitioner the right to submit pertinent documents to the district courts and the U.S. Court Of Appeals For The Sixth Circuit will automatically give prison authorities "Unbridled Power" to violate Petitioner's rights at will and others similarly situated. The Sixth Circuit is also in violations of statute 28 U.S.C. 1915(g) even moreso by their ORDER of June 15, 1999, to deny Petitioner's mandamus etc; because 28 U.S.C. 1915(g) states in pertinent part: "unless the prisoner is under imminent danger of serious physical injury."

Since Petitioner is indigent and cannot afford to pay the full filing fee of $105.00 in a lump sum; the Sixth Circuit and district court's requirement is that Petitioner will have to sustain serious physical injury in order to proceed in forma pauperis under 28 U.S.C. 1915(g) or continue to allow prison officials to violate his substantial Constitutional rights.

Petitioner also believe the Sixth Corcuit further erred and abused their discretion by their foot-note statement in their ORDER of June 15, 1999,

which states: "The court takes judicial notice of the fact that the petitioner has filed 43 appeals and original actions with this court since 1994. Many of these appeals and actions were affirmed or dismissed on grounds of frivolousness." Id. at Appendix-A, "ORDER filed June 15, 1999, page 3"

Petitioner seriously feels that the Sixth Circuit is very unfair, and in error for making that statement. Because it gives one the impression that no matter the circumstances, situation or evidence Petitioner encounter or submit to the Sixth Circuit and the district court, he would not receive proper and fair justice. In short, Petitioner feels the statement the Sixth Circuit made is nothing less than "Judicial Bias" towards Petitioner. U.S. Const. Amend. Fourteen.

Though Petitioner never mentioned it in his questions presented, Petitioner believes he would have gotten proper justice (jury trial) etc, if the district court would have granted him a change of venue. 28 U.S.C. 1404. And though the district court for the Northern district of Ohio violated Petitioner's Seventh and Fourteenth Amendment rights by refusing to ever grant the Petitioner a trial by jury; the district court still listed previous lawsuits filed by Petitioner that was dismissed by the Southern and Northern districts as frivolous. Appendix-B, ORDER filed February 10, 1999, page 2."

Therefore, Petitioner could never receive a fair trial in these district courts and though Petitioner pleaded for a change of venue (Appendix-D, "MOTION FOR RECONSIDERATION AND A TRIAL BY JURY, PAGE 2;" this request too was denied by the district court. Appendix-B, "MEMORANDUM DECISION AND ORDER, filed January 6, 1999, page 3." See Baltimore & Ohio R. Co. v. Kepner, 1941, 62 S. Ct. 6, 314 U.S. 44, 86 L. Ed. 28; see also, In Re Murchison, Michigan 1955,

75 S. Ct. 623, 349 U.S. 133, 99 L. Ed. 942___, The court stated: "Importance of federal Constitutional question raised in proceedings wherein witness before a Michigan "Judge-Grand Jury" were adjudged in contempt by same Judge who had sat as grand jury caused Supreme Court to grant certiorari."

Furthermore, since this action were filed May 22, 1995, The district court and the Sixth Circuit Court Of Appeals should never allow 28 U.S.C. 1915(g) to be a jurisdictional bar to be applied to this action and other actions (retroactively) filed prior to April 26, 1996. Wright v. Morris, 111 F. 3d 414, 421 (6th Cir. 1997), cert. denied, 65 U.S.L.W. 3783 (U.S. Oct. 6, 1997).

WAS RULES INFRACTIONS CONDUCT REPORT WRITTEN BY RESPONDENT W. BROOKS A DISCIPLINARY FRAME-UP AND WRITTEN UNJUSTIFIED AND INVIDIOUS?

On the morning of May 3, 1995, approximately 6:04 a.m., Respondent W. Brooks had just made the morning count and Petitioner had just awaken.

The usual procedure with Respondent W. Brooks and all the guards at Marion Correctional Institution (hereinafter, MCI) called their count in then allow any inmates to go to the rest room or wash up etc. Respondent W. Brooks (whom has always talked to Petitioner,telling Petitioner that he was a very decent inmate) called his count in then went to the day room to fool around the guards desk. Petitioner whom had to urinate very badly, waited almost ten minutes; and after W. Brooks had hollered and told everyone to stay put until count clears, when Petitioner could no longer hold his water (urine) Petitioner went to the desk and asked W. Brooks in a kind way could he use the rest room because he had to go very badly. W. Brooks responded with, "Hey! We got another conduct report." Petitioner just shrugged W. Brooks statement (comment) off and went to the rest

room to urinate. When Petitioner got back to his bunk, guard Mayhew, another Respondent in this action (W. Brooks** colleague), told Petitioner to turn around to be handcuffed to be taken to segregation. Appendix-D, "Original 42 U.S.C. 1983 Complaint, filed in the U.S. District court on 5/22/95, page 3 and 4." Petitioner complied and was taken to segregation where he served 6 days in Disciplinary Control. Sandin v. Conner, 515 U.S. 472, 57 CrL 2172 (1995) (Prisoners had liberty interest in remaining free of administrative segregation);

U.S. Const. Amend. 14. And Petitioner have never heard of any inmate (except the inmate that was Petitioner's neighbor and also received a conduct report on the same morning of May 3, 1995, for the same Rules Infractions) ever receiving a Rules Infractions conduct report for asking the guard could he use the rest room after a morning count.

While Petitioner was locked in segregation he complied with Rules, regulations and procedures by submitting an institutional kite to Respondent Sergeant Pressley, Chairman of Rules Infractions Board (RIB) and informed him that Petitioner needed his legal materials for a court dead line of 5/8/95 (Appendix-F, "EXHIBIT-13.").

Petitioner also submitted a "Vault Requst Form" to the proper authorities with the required information written on it. Appendix-F, "EXHIBIT-14." But everyone ignored Petitioner's plea for his law book and legal materials including Respondent Sergeant Pressley. Instead, Respondent Pressley found the Petitioner guilty of a Class 2, Rule 25, out of place on May 8, 1995. Appendix-D, "Original 1983 Complaint, filed 5/22/95, page 4."

**

Petitioner believes that Respondent W. Brooks was transferred from MCI in May, June, or July/1995 to a correctional facility in the State of Texas. Petitioner was transferred from MCI in August 31, 1995 to Belmont Correctional Institution.

From Respondent Sergeant Pressley's** behavior as well as all the Respondents named in this action, retaliation and conspiracy played a big part in depriving Petitioner of his fedarally protected rights. Newsome v. Norris, 888 F. 2d 371 (6th Cir. 1989); Cale v. Johnson, 861 F. 2d 943, 950 (6th Cir. 1988); U.S. Const. Amend. 1, 14. Because Petitioner had a pending 1983 legal action filed against Respondent Sergeant Pressley, Respondent Randy Shears and Respondent Shirley A. Rogers**whom held the title of Warden at MCI on May 3, 1995. Appendix-D, "Original 42 U.S.C. 1983 Complaint, filed in the U.S. District Court on 5/22/95, page 4." In fact, every Respondent played a big part in retaliating gaainst Petitioner, conspiring and obstructing justice,continuously while Petitioner was incarcerated at MCI. Appendix-F, "EXHIBITS-7,8, 12." Also see Appendix-C, "PERMISSION TO FILE A WRIT OF MANDAMUS, "EXHIBITS-4,5." And the Petitioner feard for his life because he was under imminent danger of serious physical injury. Helling v. McKinney, 113 S. Ct. 2475, 2481 (1993); Rider v. Louw, 957 F. Supp. 983, 986 (E.D. Mich., 1997); Gibbs v. Roman, 116 F. 3d 83 (3rd Cir. 1997), "3rd Cir. Applies "Imminent Danger" Exception to PLRA 3 Strikes."

See Farmer v. Brennan, 114 S. Ct. 1970 (1994); Parratt v. Taylor, 451 U.S. 527, 535, 101 S. Ct. 1908, 1913, 68 L. Ed. 2d 420 (1981); Ex Parte Young, 209 U.S. 123, 52 L. Ed. 714, 28 S. Ct. 441 (1908) (Continuous Constitutional violations); U.S. Const. Amend. 1, 8, 14.

> Whereas, Prison regulations/life imposes an "atypical and significant hardship on Petitioner in relation to the ordinary incidents of prison life;" U.S.C.A. Amend. 14; Hudson v. McMillian, 503 U.S. 1, 9, 112, S. Ct. 995, 117 L. Ed. 2d 156 (1992); 28 U.S.C. 1915(g).

**

Petitioner talked to Respondent Sergeant Pressley about his legal materials and court dead line prior to May 8, 1995, at RIB, Hearing in O-Block, which Sergeant Pressley was in authority, i.e., Respondent/Superior. And Respondent Shirley A. Rogers was a Defendant in a similar 1983 civil rights action,Filed 3/28/95

Furthermore, the Court stated: "On going denial of a Plaintiff's Constitutional rights warrants injunctive relief." Africa v. Vaughan, 998 F. Supp. 552.

In this instance, there were a chronology of events by Respondents which can plausibly be inferred.

RESPONDENTS MUST NOT PREVAIL ON RESPONDEAT SUPERIOR

The district court gave Summary Judgment to Respondents on the basis of Respondeat Superior. Appendix-B, "MEMORANDUM OPINION AND DECISION, FILED July 22, 1998, page 6." When in fact Respondent Sergeant Pressley (Chairman of Rules Infractions Board (RIB), is in charge of any inmates locking in segregation. And he was notified by Petitioner concerning Petitioner's court dead line of 5/8/95 (Appendix-F, "EXHIBIT-13)."

Respondent and Warden Shirley A. Rogers already had a pending 1983 legal action against her for causing Petitioner to miss a pertinent court deadline because she ordered/ condoned the order to lock Petitioner in segregation and refused to give Petitioner his requested legal materials. This case (entitled: ROBERT E. PRUNTY v. SHIRLEY A. ROGERS, Warden; O.H. WOOD, Deputy Warden, No. 3: 95 CV 7199, filed 3/28/95) is still pending in the U.S. Court Of Appeals For The Sixth Circuit. And that particular case, the same as this one, was in regards to the filing of a writ of certiorari to the Supreme Court Of The United States. Thus, Respondent Shirley A. Rogers was fore-warned about Petitioner's federally protected rights being violated by her subordinates and she, as well as all named Respondents in this action, must not prevail on Respondeat Superior.

The court held:

> "Vicarious liability and respondeat superior; supervisory liability. S.D.N.Y. 1998. Personal involvement of prison supervisor in deprivation of inmate's constitutional right,

> required for finding of individual liability under 1983, may be shown by evidence that supervisor: participated directly in alleged constitutional violation failed to remedy wrong after being informed of violation: created policy or custom under which wrongful acts occurred, or allowed continuance of such policy of custom; was grossly negligent in supervising subordinates who committed wrongful acts; or exhibited deliberate indifference to rights of inmates by failing to act on information that wrongful acts were occurring. " 42 U.S.C.A.__Salahuddin v. Coughlin, 999 F. Supp. 526.

Rules Infractions Board (RIB) Chairman at MCI as well as at Belmont Correctional Institution and Camp, have authority over all inmates awaiting for a Rule Infraction Conduct Report to be heard. A long standing policy every where Petitioner have been incarcerated. Respondent Sergeant Pressley held the title of Rules Infractions Board (RIB) Chairman in May/1995. And Respondent Sergeant Pressley was also assigned to O-Block (Disciplinary Control; segregation) in May/1995 at MCI.

Even the Ohio legislature, in apparent recognition of these principles, has established a policy that inmates are to have:

> "reasonable access to legal materials and a reasonable opportunity to prepare legal documentation." OHIO ADMIN. CODE 5120-9-48(A) (West 1997). Further, the statute requires that;
> "[i]nmates in . . . security control shall be afforded the same access to legal materials as those in the general population." OHIO ADMIN. CODE 5120-9-48 (B) (West 1997).

Therefore, Respondents Pressley and Shirley A. Rogers should be held liable for causing Petitioner to miss his court dead line by denying Petitioner requested legal materials and law book. Casey v. Lewis, 116 S. Ct. at 2179; and therefore also, violated Petitioner's adequate, effective and meaningful access to the courts; Bounds v. Smith, 430 U.S. 817, 824, 828

(1977) (Prisoners have Constitutional right to adequate, effective, and meaningful access to courts to challenge violations of Constitutional rights); Johnson v. Avery, 393 U.S. 483, 485 (1969) (prisoners access to courts may not be denied or obstructed); Wolff v. McDonnell, 418 U.S. 539, 579 (1974); U.S. Const. Amend. 1, 14.

Petitioner was preparing a writ of certiorari entitled: PRUNTY v. Branson, et al., No. 94-3916, and needed only a couple more days to meet his (90) day dead line in order to submit his writ of certiorari to the Supreme Court Of The United States; therefore, Petitioner believes the Respondents named in this action caused him actual injury, extreme prejudice, intentional infliction of pain and emotional distress. Denton v. Hernandez, 504 U.S. 25 (1992). Though the PRUNTY v. BRANSON case was dismissed as frivolous in the lower courts, nonetheless, Petitioner still had a Constitutional right to legal materials and law book to pursue this right, and the Petitioner still believe that when the Respondents denied him this right they caused him actual injury. Id; Vaughn v. Trotter, 516 F. Supp. 886 (M.D. Tenn., 1980); Patterson v. Mintzes, 717 F. 2d 284, 288 (6th Cir. 1983) (emphasis added); Walker v. Mintzes, 717 F. 2d 920, 932 (6th Cir. 1985); Casey v. Lewis, 116 S. Ct. at 2179; Casey v. Lewis, __U.S.__, 116 S. Ct. 2174, 2180 (1996); see also, Johnson v. Hubbard, 698 F. 2d 286, 288 (6th Cir.), Cert. denied, 464 U.S. 917 (1983); Lewis v. Casey, 116 S. Ct. at 2179.

Petitioner believes that all named Respondents in this action caused him actual injury, extreme prejudice, intentional infliction of pain and emotional distress and violated Petitioner's rights, privileges and immunities secured by the Constitution of the United States. Parratt .v Taylor,

451 U.S. 527, 535, 101 S. Ct. 1908, 1913, 68 L. Ed. 2d 420 (1981).

JURISDICTION

The United States District Court For The Northern District of Ohio had basic jurisdiction in this case under 28 U.S.C. 1331, 1343; and The United States Court Of Appeals For The Sixth Circuit had jurisdiction in this case under 28 U.S.C. 1291, 1651; Rule 21, Federal Rules Of Appellate Procedure; and jurisdiction is invoked in this Honorable Court under 28 U.S.C. 1254 (1); also, Rules 13, 14, S. Ct. Rules.

The writ will be in aid of the appellate court jurisdiction because it seems that the United States Court Of Appeals For The Sixth Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Honorable Court.

The Honorable Court's discretionary powers must be exercised when the United States Court Of Appeals For The Sixth Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the United States District Court For The Northern District Of Ohio, as to call for an exercise of the Honorable Court's supervisory power.

Adequate relief cannot be obtained in any other form or from any other court for the reasons that Petitioner have exhausted all available remedied in the courts below.

Petitioner respectfully requests the Honorable court to grant him the following relief:

(1) To award him the amount of damages prayed for in the original 1983 Complaint (Appendix-D, "Original 42 U.S.C. 1983 Complaint,

filed in the U.S. District Court on 5/22/95, page 5;")or (2) To award the Petitioner the amount of damages the Honorable Court deem just and fair to Petitioner; or (3) To grant Petitioner a jury trial and to allow him to proceed in forma pauperis at said jury trial because Petitioner is under imminent danger of serious physical injury; and even as the United States Court Of Appeals For The Sixth Circuit rendered their decision in their ORDER (Appendix-A, "ORDER of U.S. Court of Appeals For The Sixth Circuit, filed June 15, 1999") Petitioner was under imminent danger of serious physical injury from retaliation for the exercising of his right of access to the courts (Appendix-F, "EXHIBITS-10,11"); (4) To grant Petitioner counsel to represent him in this action; and (5) any other relief the Honorable Court deem just and proper to Petitioner.

CONCLUSION

The petition for a writ of certiorari to the United States Court of Appeals For The Sixth Circuit should be granted.

Respectfully Submitted,

Robert E. Prunty

Robert E. Prunty, # 184-764
Belmont Correctional Camp
P.O. Box 540
St. Clairsville, Ohio 43950
Petitioner, Pro-Se
(740) 695-5169

Dated July 6, 1999

22.23.

Nos. 99-3154/3576

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
JUN 15 1999
LEONARD GREEN, Clerk

ROBERT E. PRUNTY,

Plaintiff-Appellant,

v. (99-3154)

W. BROOKS, et al.,

Defendants-Appellees.

In re: ROBERT E. PRUNTY,

Petitioner. (99-3576)

ORDER

Before: KEITH, DAUGHTREY, and MOORE, Circuit Judges.

The petitioner filed a *pro se* prisoner's civil right action asserting prison officials violated his rights by falsely subjecting him to a period of disciplinary control which resulted in his missing a deadline for filing a petition for a writ of certiorari with the United States Supreme Court. The district court dismissed certain claims and granted summary judgment to the defendants on the remaining claims. The petitioner appealed that judgment and the appeal was docketed with this court as Case No. 99-3154. The district court subsequently denied the petitioner's motion for leave to appeal *in forma pauperis*. In so doing, the district court identified thirteen prior civil rights actions filed by the petitioner which had been dismissed as frivolous. Under the three-strikes provision of 28 U.S.C. § 1915(g), therefore, the district court held that the petitioner could not appeal *in forma pauperis*, but was required to pay the full $105.00 filing fee or his appeal would be dismissed for want of prosecution.

A

APPENDIX-A

The petitioner responded to the above order by filing a motion to proceed on appeal *in forma pauperis* as part of his appeal in Case No. 99-3154. He also filed, however, a petition for a writ of mandamus which would have the result of permitting him to appeal *in forma pauperis* in Case No. 99-3154. That petition was docketed with the court as Case No. 99-3576. He asserts that he is in imminent danger of serious physical injury and thus is exempt from the three-strike provision.

Congress passed the "three-strike provision" found in § 1915(g) as part of the Prison Litigation Reform Act of 1996 (the "PLRA"). It provides that a prisoner cannot file a civil action or appeal *in forma pauperis* if he has had three or more prior civil actions or appeals dismissed on the grounds of frivolousness, maliciousness, or failure to state a claim upon which relief could be granted. This court has held that actions dismissed prior to the effective date of the PLRA may be counted toward the three strikes and that application of the provision does not violate due process or equal protection. *See Wilson v. Yaklich*, 148 F.3d 596 (6th Cir. 1998), *cert. denied*, 119 S. Ct. 1028 (1999).

In denying the petitioner leave to appeal *in forma pauperis*, the district court identified thirteen prior civil rights actions filed by the petitioner which had been dismissed as frivolous. Under the provisions of § 1915, therefore, neither the district court nor this court can permit the petitioner's appeal to proceed without the payment of the full filing fee unless the petitioner can show that he is subject to imminent danger of serious physical injury. In affidavits accompanying his mandamus petition, the petitioner shows that a food-tray thrown by another inmate on October 11, 1994, "came close to hitting inmate PRUNTY'S head." We conclude this incident, which happened nearly five years ago, hardly qualifies as a imminent danger permitting the petitioner to avoid the payment requirements of § 1915(g). While he may view the payment of the filing fee as harsh, it is the result intended by Congress in enacting the PLRA.

It therefore is **ORDERED** that the motion to proceed on appeal *in forma pauperis* in Case No.

99-3154 is denied. It is further **ORDERED** that the petition for a writ of mandamus in Case No. 99-3576 is dismissed as frivolous.

Upon further consideration, the court notes that the present mandamus petition is not the first filed by the petitioner in an effort to circumvent the requirements of § 1915(g). We have also denied similar mandamus petitions filed herein as Cases No. 99-3127 and 99-3428. These repeated filings unnecessarily burden the court's time and energies, unfairly divert court resources from other cases, and generally constitute an abuse of this court's docket.

It therefore is **ORDERED** that the clerk not accept for filing any future petitions for mandamus, prohibition, habeas corpus, or similar original actions submitted by the petitioner if such petition or original action pertains to the requirements of § 1915(g) or the payment of filing fees in the district court or this court. The petitioner is further placed on notice that the abusive use of such original actions for any other purpose may result in this court either entering a similar order as to all original actions or an order directing the clerk not to accept for filing any such petition or original action without the full payment of the filing fee required by this court.*

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk

*The court takes judicial notice of the fact that the petitioner has filed 43 appeals and original actions with this court since 1994. Many of these appeals and actions were affirmed or dismissed on grounds of frivolousness.

Case No: 99-3154

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ORDER

ROBERT E. PRUNTY

Plaintiff - Appellant

v.

W. BROOKS, et al.,

Defendants - Appellees

FILED

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LEONARD GREEN, Clerk

Since the $105 filing fee was not timely paid in accordance with the district court's directions, this appeal is **ORDERED** dismissed for want of prosecution.

Pursuant to McGore v. Wrigglesworth, 114 F.3d 601 (6th Cir. 1997), the appeal will not be reinstated even if the filing fee is subsequently paid.

ENTERED PURSUANT TO RULE 45(a), RULES OF THE SIXTH CIRCUIT.
Leonard Green, Clerk

Leonard Green, Jr.

A APPENDIX-A

FILED

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NORTHERN DISTRICT OF OHIO
TOLEDO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ROBERT E. PRUNTY,	)	CASE NO. 3:95 CV 7308
	)	
Plaintiff,	)	MAGISTRATE JUDGE
	)	VERNELIS K. ARMSTRONG
v.	)	
	)	ORDER
W. BROOKS, et al.,	)	
	)	
Defendants.	)	

On February 2, 1999, plaintiff filed a Notice of Appeal in this case and Motion to Proceed In Forma Pauperis on Appeal. Pursuant to 28 U.S.C. § 1915(a), a court may authorize the commencement of an appeal without prepayment of fees if an applicant has shown by affidavit that he satisfies the criterion of poverty. However, prisoners become responsible for paying their filing fees and costs from the moment the notice of appeal is filed. 28 U.S.C. § 1915(b); McGore v. Wigglesworth, 114 F.3d 601, 604 (1997). When an inmate seeks pauper status, the only issue for the court to determine is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan. Id. Moreover, absent imminent danger, the benefit of the installment plan is denied to prisoners who have on three or more prior occasions, while incarcerated, brought an action that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief could be granted. 28 U.S.C. § 1915(g).

Plaintiff is a prisoner in an Ohio correctional institution and has filed more than three

B

APPENDIX-B

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previous actions which were dismissed as frivolous.[1] Accordingly, plaintiff's Motion to Proceed In Forma Pauperis on Appeal is denied, and he is ordered to pay the full fee of $105 for this appeal within thirty (30) days of the date of this order. Plaintiff is hereby notified that if he does not pay the filing fee within the time period specified herein, the Court of Appeals may dismiss the appeal for want of prosecution under Fed. R. App. P. 3(a). Further, if the appeal is dismissed for want of prosecution, it will not be reinstated despite the subsequent correction of the deficiency.

IT IS SO ORDERED.

Vernelis K. Armstrong
VERNELIS K. ARMSTRONG
UNITED STATES MAGISTRATE JUDGE

[1] The previous lawsuits dismissed as frivolous in this court are: Prunty v. Wilkinson, 5:91 CV 1442; Prunty v. Baker, 5:91 CV 1467; Prunty v. Voinovich, 5:91 CV 2126; Prunty v. Capots, 5:92 CV 382; Prunty v. Voinovich, 3:93 CV 7034; Prunty v. Ferguson, 3:94 CV 7162; Prunty v. Voinovich, 3:94 CV 7186; Prunty v. Earl, 3:94 CV 7712; Prunty v. Dunlap, 3:95 CV 7541; Prunty v. State of Ohio, 1:97 CV 298; Prunty v. State of Ohio, 1:97 CV 394; Prunty v. Saferin, 1:97 CV 1107; and Prunty v. Katz, 3:98 CV 7405. In addition, the court recognizes that plaintiff has filed at least two lawsuits in the United States District Court for the Southern District of Ohio which have been dismissed as frivolous: Prunty v. Holschuh, 2:97 CV 951, and Prunty v. Smith, 2:98 CV 683.

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(Rev.8/82)

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Robert E. Prunty,	:	Case No. 95 CV 7308
Plaintiff,	:	
vs.	:	
W. Brooks, et al.,	:	**MEMORANDUM DECISION AND ORDER**
Defendants.	:	

This prisoner civil rights case filed initially pursuant to 42 U.S.C. § 1983 is before the Court on Plaintiff's unopposed Motion for Reconsideration (Docket No. 47). For the reasons that follow, Plaintiff's Motion for Reconsideration is Denied.

When the decision granting Defendants' Motion for Summary Judgment was granted, Plaintiff was incarcerated at Belmont Correctional Institution. On May 3, 1995, Plaintiff was found guilty of violating prison rules and sentenced to disciplinary control. He filed this case alleging claims of retaliation and conspiracy against Defendants. The Court granted in part Defendants' Motion for Summary Judgment and dismissed the retaliation claim.

Defendants' second Motion for Summary Judgment was denied and a third Motion for Summary Judgment was granted on the basis that there were no genuine issues of material fact relative

to Plaintiff's claims of conspiracy, denial of legal materials or retaliation. Judgment was entered on July 23, 1998.

Plaintiff filed a Motion for Reconsideration on August 5, 1998. Although the Federal Rules of Civil Procedure do not provide for a motion for reconsideration, if served within ten days of the entry of judgment, a motion for reconsideration is considered a motion to alter or amend judgment under FED. R. CIV. P. 59(e). Nagle Industries v. Ford Motor Company, 175 F.R.D. 251, 253 (E.D. Mich. 1997) (*citing* Basinger v. CSX Transp., Inc., 91 F.3d 143 (Table, Text in Westlaw), 1996 WL 400182, *2 (6th Cir.1996), *cert. denied* 117 S. Ct. 950 (1997) (*citing* Huff v. Metropolitan Life Ins. Co., 675 F.2d 119, 122 (6th Cir.1982)). Motions to alter or amend are "not intended as a vehicle to relitigate previously considered issues"; "should not be utilized to submit evidence which could have been previously submitted in the exercise of reasonable diligence"; and are not the proper vehicles to attempt to obtain a reversal of a judgment "by offering the same arguments previously presented." Id. at 254 (citations omitted).

Motions to amend or alter judgment are generally granted because of an intervening change in the controlling law; because evidence not previously available has become available; or because of the necessity to correct a clear error of law or prevent manifest injustice. Id. (*citing* Keweenaw Bay, 940 F.Supp. at 1141 (footnote and citation omitted)). Motions to alter or amend, brought pursuant to FED. R. CIV. P. 59(e), "are entrusted to the Court's sound discretion." Id. (*citing* Keweenaw Bay Indian Community v. United States, 940 F. Supp. 1139, 1140 (W. D. Mich.1996) (*citing* Huff, 675 F.2d at 122)). Plaintiff's Motion for Reconsideration is considered a Motion to Alter or Amend Judgment pursuant to FED. R. CIV. P. 59 (e).

Plaintiff has neither presented evidence of an intervening change in the controlling law nor

submitted new evidence. Plaintiff's claim for reconsideration is reviewed based upon whether errors in law must be corrected or to prevent injustice. The Magistrate finds that there is no merit to Plaintiff's request for a trial by jury or change of venue. A request for a trial by jury must be made not later than ten days after the service of the last pleading directed to such issue. *See* FED. R. CIV. P. 38(b). The failure of a party to serve and file a demand consistent with FED. R. CIV. P. 38(b) constitutes waiver by the party of trial by jury. Plaintiff has waived his right to request a trial by jury.

Plaintiff claims that he is unable to receive fair and just consideration in this Court; consequently, his case should be removed to any court outside the State of Ohio. There is a presumption that Plaintiff chose the proper forum when he filed the lawsuit. *See* General Motors Corporation v. Ignacio Lopez De Arriortua, 948 F. Supp. 656, 668 (6th Cir. 1996) (*citing* Gulf Oil Corporation v. Gilbert, 67 S.Ct. 839, 843-844 (1947)). Plaintiff failed to raise the issue of his choice of the proper forum prior to the Court rendering judgment. The Magistrate finds the contention that venue is now improper, moot.

For these reasons, Plaintiff's Motion for Reconsideration (Docket No. 47) is Denied.

IT IS SO ORDERED.

Vernelis K. Armstrong
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROBERT E. PRUNTY,	:	Case No. 3:95 CV 7308
Plaintiff,	:	
vs.	:	
W. BROOKS, et al.,	:	**MEMORANDUM OPINION AND DECISION**
Defendants.	:	

This prisoner civil rights action was filed pursuant to 42 U.S.C. § 1983. The parties have consented to have the undersigned Magistrate conduct all proceedings and to enter judgment in this case. Pending is Defendants' Third Motion for Summary Judgment (Doc. 39), supported by the Affidavit of Defendant Jerry Pressley (Doc. 41) and the Affidavit of Defendant Randy Fox (Doc. 42), to which Plaintiff filed a Response (Doc. 43) and Defendants filed a Reply (Doc. 44). For the reasons set forth below, Defendants' Third Motion for Summary Judgment is Granted.

FACTUAL BACKGROUND

Plaintiff, Robert E. Prunty, is currently an inmate at Belmont Correctional Institution (BCI). During the time in question, Guards W. Brooks and Mayhew; Sergeants Kennedy and Pressley; Caseworker Randy Shears; and Warden Shirley A. Rogers all worked at Marion Correctional Institute

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(MCI) where Plaintiff was previously incarcerated. They are co-Defendants in this case.

On May 3, 1995, Plaintiff was found guilty of violating a prison rule which resulted in a six-day stay in disciplinary control. Plaintiff asserts that during the time in disciplinary control, his request for legal materials was denied. He claims that this denial caused him to miss the May 8, 1995 deadline for filing a writ of certiorari to the United States Supreme Court in another lawsuit, Prunty v. Branson (Case No. 94-3916). Plaintiff filed this lawsuit under 42 U.S.C. § 1983 against Defendants on May 22, 1995 claiming that the conduct report which resulted in his stay in disciplinary control was false, unjustified and invidious (Doc. 1). He further claimed that the filing of such report was based on Defendants' conspiracy and retaliation against him for other suits filed against prison officials (Doc. 1). This claim for retaliation was dismissed by Judge James G. Carr's Order granting in part Defendants' first Motion for Summary Judgment (Doc. 23).

Plaintiff also asserted that while in disciplinary control, Defendants' conspiracy and retaliatory conduct caused him to miss the filing deadline to submit a writ of certiorari (Doc 1). On this issue, Judge Carr denied both Defendants' first Motion for Summary judgment and Plaintiff's Cross-Motion for Summary Judgment, reserving for trial the issue of whether Defendants were retaliating against Plaintiff when they failed to provide him with his legal materials (Doc. 23).

Defendants filed a Second Motion for Summary Judgment for which the undersigned Magistrate issued a Memorandum Opinion and Decision (Doc. 24 and 36). Defendants argued that because Plaintiff's certiorari petition was frivolous he did not suffer an injury (Doc. 24 and 33). The Magistrate denied Defendants' Motion based on their failure to rebut Plaintiff's allegation of retaliation in denying him legal materials (Doc. 36).

Defendants filed a Third Motion for Summary Judgment which is the subject of these proceedings.

AO 72A
(Rev. 8/82)

The issue of Defendants' retaliation upon Plaintiff in denying him legal materials is currently before this court.

SUMMARY JUDGMENT STANDARD

Defendants have filed a Third Motion for Summary Judgment for which the standard of review is found in FED. R. CIV. P. 56. Summary judgment procedure is designed to dispose of cases wherein there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. See FED. R. CIV. P. 56. The principal purpose of summary judgment "is to isolate and dispose of factually unsupported claims and defenses." Celotex Corp. v. Catrett, 106 S.Ct. 2548, 2553-2553 (1986). FED. R. CIV. P. 56(e) places the responsibility on the party against whom summary judgment is sought to demonstrate that summary judgment is improper, either by showing the existence of a material question of fact or that the underlying substantive law does not permit such a decision. Further, Rule 56(e) requires that the nonmoving party go beyond the pleadings, and by affidavits, depositions, answers to interrogatories, or admissions on file, designate specific facts showing a genuine issue for trial. Id. at 2553.

A court must look to the material facts to determine the substantive law. Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505, 2510 (1986). If the dispute about a material fact is genuine, summary judgment should be denied. Id. at 2510. In deciding a motion for summary judgment the court may not resolve issues of conflicts in the evidence or make credibility determinations. The evidence of the nonmovant is to be taken as true and all justifiable inferences drawn in his or her favor. Id. at 2513 (*citing* Adickes v. S.H. Kress & Co., 90 S.Ct. 1598, 1608-1609 (1970)).

Summary judgment is proper if the pleadings, depositions, answers to interrogatories and admissions on file, with the affidavits if any, show that there is no genuine issue of material fact and that

the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); Copeland v. Machulis, 57 F.3d 476, 478 (6th Cir. 1995) (*citing* LaPointe v. UAW, Local 600, 8 F.3d 376, 378 (6th Cir. 1993)).

The moving party bears the initial burden of establishing an absence of evidence to support the nonmoving party's case. Celotex, 106 S.Ct. At 2552-2553. In the face of a party's properly supported Motion for Summary Judgment, the nonmovant cannot rest on his or her allegations to get to the jury without significant probative evidence tending to support the complaint. Anderson, 106 S.Ct. at 2510 (1986) (*citing* First National Bank of Arizona v. Cities Services Co., 88 S.Ct. 1575, 1593 (1968)). The mere existence of a scintilla of evidence to support plaintiff's position will be insufficient; there must be evidence on which a jury could reasonably find for the plaintiff. Anderson, 106 S.Ct. at 2512.

To oppose a motion for summary judgment successfully, the "opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 106 S.Ct. 1348, 1355 (1986). In determining if the facts are material, the court must look to the substantive law. The evidence of the nonmovant is then taken as true and all justiciable inferences are drawn in his or her favor. Stack v. Killian, 96 F.3d 159, 161 (6th Cir. 1996) (*citing* Matsushita Electric, 106 S.Ct. at 1356). The Court must refrain from resolving conflicts in the evidence or making credibility determinations. Id. If, after deciding, the dispute about a material fact is genuine, summary judgment should be denied.

DISCUSSION

In moving for summary judgment, Defendants argue two issues: 1) they were not personally involved in denying Plaintiff access to legal materials; and 2) Plaintiff was not prejudiced in presenting a non-frivolous claim. Plaintiff counters that Defendants were personally involved in the denial of legal

materials and his claim is not frivolous.

While in disciplinary control, Plaintiff was entitled to his cell privileges, which included access to reading material, first-class mail, legal mail, and kite privileges. OHIO ADMIN. CODE § 5120-9-07(N) (1998). Abuse of cell privileges may be dealt with summarily by the staff member on duty in the disciplinary control area (except that in no case shall kite, mail or medical services be denied). OHIO ADMIN. CODE § 5120-9-07 (O) (1998). This action shall be reported to his/her superior for review and approval. OHIO ADMIN. CODE § 5120-9-07 (O) (1998). This action shall then be reported to the deputy warden of operations who shall forward to the managing officer a weekly list of those inmates in disciplinary control who have had cell privileges denied, the length of time denied and the reasons therefor. OHIO ADMIN. CODE § 5120-9-07 (O) (1998).

Plaintiff submitted evidence that his requests for legal materials were made on two occasions (Doc. 43, Exhibits 1 and 2). Plaintiff specifically addressed one of these requests to Defendant Pressley (Doc. 43, Exhibit 1). Since Plaintiff's evidence must be taken as true and all justiciable inferences are drawn in his favor, the Magistrate finds that Defendant Pressley did receive this request. Stack v. Killian, 96 F.3d 159, 161 (6th Cir. 1996) (*citing* Matsushita Electric, 106 S.Ct. at 1356). However, according to the uncontroverted testimony of Defendant Pressley, the officer supervising O-block is in charge of responding to an inmate's request for legal materials from the vault (Docket No. 41). Major Randy Fox, Chief Security Officer, provided an affidavit stating that Defendant Pressley was not assigned to O-block in early May 1995 (Docket No. 42). In fact, none of the named Defendants were on duty in O-block during early May 1995 (Docket No. 42). Consequently, none of the Defendants were obligated to respond to Plaintiff's kite requesting legal materials.

In regard to Defendants Brooks, Mayhew, Kennedy and Shears, Plaintiff has not provided a

scintilla of evidence to show their personal involvement in denying him legal materials while he was detained in disciplinary control. Id. Without a showing of any personal involvement of each of these four Defendants, this Court cannot find that a jury would reasonably find for the Plaintiff. Id. Therefore, Defendants Brooks, Mayhew, Kennedy and Shears are entitled to summary judgment on the basis of their lack of personal involvement in denying Plaintiff access to legal materials.

Defendant Rogers is also entitled to summary judgment on the basis of Plaintiff's lack of evidence of her involvement under the doctrine of *respondeat superior*.[1] It has been consistently held that the doctrine of *respondeat superior* is inapplicable in actions under 42 U.S.C. § 1983. Monell v. Department of Social Services, 98 S.Ct. 2018, 2035 (1978); Rizzo v. Goode, 96 S.Ct. 598, 604 (1976). A supervisory employee cannot be held liable under Section 1983 for the constitutional torts of those s/he supervises, unless it is shown that the specific incident of misconduct was encouraged or that the supervisor directly participated in it. Lillard v. Shelby County Board of Education, 76 F.3d 716, 721 (6th Cir. 1996) (*citing* Bellamy v. Bradley, 729 F.2d 416, 421 (6th Cir. 1984)).

In order to prevail on this claim, the Plaintiff must establish that the Defendant is culpable because of personal involvement in depriving him/her of their rights to due process, Copeland v. Machulis, 57 F.3d at 481; *See* Rizzo v. Goode, 96 S.Ct. at 606-607 (1976), or that s/he otherwise encouraged or condoned others in doing so. Id. (*citing* Bellamy, 729 F.2d at 421). Here, Plaintiff has not presented any evidence that Defendant Rogers was personally involved or in any way encouraged or condoned the denial of Plaintiff's legal materials. Therefore, summary judgment is granted to

---

[1] *Respondeat superior* is a principle under which an employer is liable for injury to the person or property of another proximately resulting from acts of the employee done within scope of his employment in the employer's service. Blankenship v. Parke Care Centers, 123 F.3d 868, 876 (6th Cir. 1997) cert. denied 118 S.Ct. 1039 (1998).

Defendant Rogers on the premise of *respondeat superior*.

Defendants also make a cursory argument that there was no conspiracy in the denial of legal materials with respect to Plaintiff's initial allegation of such in his complaint. A civil conspiracy is an agreement between two or more persons to injure another by unlawful action. Hooks v. Hooks, 771 F.2d 935, 942 (6th Cir. 1985). An express agreement among all the conspirators is not necessary to find the existence of a civil conspiracy. Id. Such an action for conspiracy can be maintained under 42 U.S.C. § 1983. Fisher v. City of Cincinnati, 753 F. Supp. 681, 690 (S.D. Ohio 1990) (*citing* Ryland v. Shapiro, 708 F.2d 967, 973 (5th Cir. 1983)). However, conspiracy claims must be pled with some degree of specificity. Gutierrez v. Lynch, 826 F.2d 1534, 1538 (6th Cir.1987). Vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim under Section 1983." Id. In the case at bar, Plaintiff's allegation of Defendants' involvement in a conspiracy is vague, conclusory and without any evidentiary support. Therefore, Defendants Pressley, Brooks, Mayhew, Kennedy, Shears and Rogers are granted summary judgment in regard to Plaintiff's claim of their involvement in a conspiracy.

Having dismissed all Defendants, the Court finds it unnecessary to address the second issue.

For the aforementioned reasons, it is **ORDERED** that Defendant's Third Motion for Summary Judgment (Docket No. 39) is Granted and all claims of retaliation, denial of legal materials and conspiracy against Defendants Brooks, Mayhew, Pressley, Kennedy, Shears and Rogers are Dismissed.

Vernelis K. Armstrong

APPENDIX-B

AO 72A
(Rev.8/82)

ISSUED

93 DEC 23 PM 12:27

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROBERT PRUNTY, 3:95CV7308

Plaintiff

V. MEMORANDUM & ORDER

W. BROOKS, et al.,

Defendants

In this prisoner civil rights case, plaintiff claims that defendants illegally retaliated against him for filing lawsuits by falsifying a conduct report which caused him to be put in disciplinary control without his legal materials so that he would miss a filing deadline. Pending are cross-motions for summary judgment. For the following reasons, defendants' motion shall be granted in part and denied in part, and plaintiff's motion shall be denied.

APPENDIX-B

Plaintiff, a frequent litigator in this court, is currently an inmate at Belmont Correctional Institution. On May 3, 1995, plaintiff, while incarcerated at Marion Correctional Institution (MCI), was issued a conduct report by defendant W. Brooks which resulted in a six-day stay in disciplinary control. According to plaintiff, his confinement in disciplinary control caused him to miss the deadline for filing a petition for writ of certiorari in the United States Supreme Court in another case, Prunty v. Branson, Case No. 94-3916. Plaintiff further alleges that defendants' decision to issue the conduct report was motivated by a desire to retaliate against plaintiff for his numerous lawsuits against them and other prison officials.

Defendants contend that they are entitled to summary judgment on the basis that plaintiff cannot show that defendants possessed retaliatory animus when they issued the conduct report. I agree. Because there is evidence that plaintiff committed the infraction for which he was disciplined, the defendants are entitled to summary judgment on plaintiff's claim that his placement in disciplinary control was in retaliation for filing cases against the defendants. See Henderson v. Baird, 29 F.3d 464, 469 (8th Cir. 1994)(finding by prison disciplinary committee that prisoner violated prison rules was based on some evidence; therefore,

prisoner did not have actionable claim for retaliation); Lowrance v. Achtyl, 20 F.3d 529, 535 (2nd Cir. 1994)(existence of retaliatory motive does not matter when state action also would have been taken in the absence of improper motives).

The remaining issue, therefore, is whether the defendants also are entitled to summary judgment on plaintiff's claim that they retaliated against him by denying him access to his legal materials. Defendants advance two arguments: 1) that there is no evidence of retaliatory motive; and 2) that plaintiff did not suffer harm by missing the deadline.

With regard to defendants' first argument, I note that defendants neither dispute plaintiff's allegation that his request that his legal materials be delivered to him in disciplinary control was not met, nor offer alternative explanations for this failure to deliver plaintiff's materials. Furthermore, plaintiff has provided copies of the form in which he specifically requested that he be provided his legal materials (Doc. 20, Exhs. 1, 2). Consequently, I conclude that defendants are not entitled to summary judgment on the basis that plaintiff cannot show retaliatory animus; retaliation is the only inference I can draw at this point in the litigation. See Jacobs v. Metcalfe, 33 F.3d 54, 1994 WL 421740 (6th Cir. (Ohio))(vacating summary judgment after

plaintiff provided specific incidents, dates, case numbers of dismissed court actions, and evidence that legal mail failed to reach its destination).

Defendants' second argument is based on the fact that plaintiff was seeking writ of certiorari from a decision of the Sixth Circuit dismissing his case for want of prosecution (Doc. 20, Exh. 3). According to defendants, "it is incomprehensible to expect the United States Supreme Court to review the Sixth Circuit's judgment that [plaintiff] failed to prosecute his action" (Doc. 21 at 2).

Nonetheless, it does not matter how unlikely it would be that the Supreme Court would have granted certiorari. In Link v. Wabash Railroad Company, 370 U.S. 626, 633 (1962), the Supreme Court stated:

> [A] District Court may dismiss a complaint for failure to prosecute even without affording notice of its intention to do so or providing an adversary hearing before acting. Whether such an order can stand on appeal depends not on power but on whether it was within the permissible range of the court's discretion.

The same reasoning applies in this case: it was within the Sixth Circuit's discretion to dismiss for want of prosecution, but that decision is still reviewable. Therefore, plaintiff suffered harm by missing the deadline for his petition for certiorari, and

defendants are not entitled to summary judgment on plaintiff's claim that they retaliated against him by denying him access to his legal materials.

Plaintiff, however, also is not entitled to summary judgment. There still exists a genuine issue of whether the reason underlying his failure to receive his legal materials was defendants' retaliatory animus.

For the foregoing reasons, it is

ORDERED THAT defendants' motion for summary judgment (Doc. 8) be and the same hereby is granted as to plaintiff's claim that defendants retaliated against him by placing him in disciplinary control; and it is

FURTHER ORDERED THAT defendants' motion for summary judgment (Doc. 8) be, and the same hereby is, denied as to plaintiff's claim that defendants retaliated against him by denying him access to his legal materials; and it is

FURTHER ORDERED THAT plaintiff's motion for summary judgment (Doc. 20) be, and the same hereby is, denied.

So ordered.

James G. Carr
United States District Judge

Rec 4-26-96

ISSUED

96 APR 22 PM 2:58

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Robert E. Prunty, — 3:95CV7308

Plaintiff(s)

v. — Order

W. Brooks, et al.,

Defendant(s)

This is a pro se prisoner civil rights case in which the defendants have filed a motion for summary judgment. The plaintiff was ordered to file his opposition to that motion by April 1, 1996; he has, however, filed a motion that is, in essence, a discovery motion (Doc. 17). That motion shall, for the reasons that follow, be overruled.

The plaintiff alleges in his complaint that he was disciplined and, as a result, missed filing deadlines with regard to pending litigation. The discipline, he claims, resulted from a conspiracy and a retaliatory motive. His complaint is entirely conclusory.

In part, plaintiff's discovery request seeks materials that have no bearing on his complaint, such as conduct reports issued during a five year period (Para. 1, 2). The other materials that he seeks, communications that he alleges he received (Para. 3), or other documents, which he claims

APPENDIX-B

AO 72A
(Rev. 8/82)

Case No. 99-3154
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT E. PRUNTY, * In Re:"ROBERT E. PRUNTY,NO.184-764"
Petitioner.
vs. * Citing: Rule 43,44,FRAP
W. BROOKS, et al,.
Respondent(s). *
*
*

PERMISSION TO FILE A WRIT OF MANDAMUS

Now comes ROBERT E. PRUNTY, Pro-Se Petitioner in the above-styled case; pursuant to Rule 21, Federal Rules Of Appellate Procedure; 28 U.S.C. 1651; 28 U.S.C. 1915(g); hereby respectfully moves the Honorable Court to provide him mandamus relief for the reasons stated in the petition that follows.

Respectfully Submitted,

Robert E. Prunty

ROBERT E. PRUNTY,NO. 184-764
Belmont Correctional Camp
P.O. Box 540
St. Clairsville, Ohio 43950
Petitioner, Pro-Se
(740) 695-5169

APPENDIX-C

BRIEF IN SUPPORT

(i) RELIEF SOUGHT:

To allow Petitioner to proceed on appeal in forma pauperis in this case pursuant to Rule 21, Federal Rules Of Appellate Procedure; 28 U.S.C. 1651; and 28 U.S.C. 1915(g); without prepayment of fees and costs or to give security therefor, and pursuant to 28 U.S.C. 1915(b)(1) and (2)cf. McGore v. Wrigglesworth, 114 F. 2d 601 (6th Cir.1997); U.S. Const. Amend. 1,7,8,14.

(ii) THE ISSUE PRESENTED:

An ORDER filed April 13, 1999, by the Honorable Court, stated in part: "Since the $105 filing fee was not timely paid in accordance with the district court's directions, this appeal is ORDERED dismissed for want of prosecution." And "ENTERED PURSUANT TO RULE 45(a), RULES OF THE SIXTH CIRCUIT."

(iii) THE FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED BY THE PETITION:

Petitioner filed this action in Pro-Se, under 42 U.S.C. 1983, 1985(2)(3), 1986; 28 U.S.C. 1331, 1343(3)(4); 28 U.S.C. 1861,1873; in the U.S. District Court For The Northern District Of Ohio, with a JURY DEMAND on May 22, 1995, against W. BROOKS, et al., Guard at Marion Correctional Institution, and five (5) other prison Officials employed at Marion Correctional Institution, located in Marion, Ohio; suing them in "their individual and Official Capacities" for damages in the amount of one million dollars($1,000,000); in compensation, punitive and exemplary damages for conspiring, retaliation, obstructing justice; and for causing Petitioner to miss his court deadline; causing Petitioner to suffer actual injury; extreme prejudice; grief; hardship; intentional infliction of pain and emotional distress. ROBERT E. PRUNTY v. W. BROOKS, Guard, et al., NO. 3:95-CV-7308. See U.S. Const. Amend. 1,8,14.

(iv) THE REASONS WHY THE WRIT SHOULD ISSUE:

Petitioner was under imminent danger of serious physical injury while incarcerated at Marion Correctional Institution (MCI), see AFFIDAVIT OF VERITY OF KEVIN CHRISTOPHER,#271-169, dated 10/25/94, presented herewith as EXHIBIT-4; see also AFFIDAVIT OF VERITY OF INMATE JACKSON,#198-813, dated 10/28/94, presented herewith as EXHIBIT-5; and Petitioner is still under imminent danger of serious

physical injury while incarcerated at Belmont Correctional Camp and Institution as well. See PERMISSION TO FILE A WRIT OF MANDAMUS in case entitled: ROBERT E. PRUNTY v. THOMAS HARDY,NO. 99-3127, filed 1/29/99; PERMISSION TO FILE A WRIT OF MANDAMUS in case entitled: ROBERT E. PRUNTY v. REGINALD A. WILKINSON,NO.99-3428; PERMISSION TO FILE A WRIT OF MANDAMUS in case entitled: ROBERT E. PRUNTY v. EDMUND A. SARGUS, JR. NO. 99-3152, submitted to the Court on 4/5/99. And the Petitioner should be granted leave to proceed in forma pauperis on appeal in this action. Gibbs v. Roman, 116 F. 3d 83 (3rd Cir. 1997), "3rd Cir. Applies "Imminent Danger" Exception to PLRA 3 Strikes;" 28 U.S.C. 1915(g); Farmer v. Brennan, 114 S. Ct. 1970 (1994); Farmer, 114 S. Ct. at 1983(Quoting Helling v. McKinney, 113 S. Ct. 2475, 2481 (1993); Roberts v. United States District Court, 339 U.S. 844, 845, 70 S. Ct. 954, 955, 94 L. Ed. 1326 (1950) (Per curiam)(denial of motion to proceed in forma pauperis is an appealable order); U.S. Const. Amend. 1,7,8,14.

Futhermore, the Court stated: "On going denial of a Plaintiff's Constitutional rights warrants injunctive relief." Africa v. Vaughan, 998 F. Supp. 552.

The writ should issue also because of the continuing violations of Petitioner's federal protected rights. cf. Ex Parte Young, 209 U.S. 123, 52 L. Ed. 714, 28 S. Ct. 441 (1908); In Re Benedectin Products Liability Litigation, 749 F. 2d 300, 303 (6th Cir. 1984); Kerr v. U.S. Dist. Court, 426 U.S. 394, 402, 96 S. Ct. 2119, 2123, 48 L. Ed. 2d 725 (1976); Rule 21, Federal Rules Of Appellate Procedure; 28 U.S.C. 1651, 1915(g).

CONCLUSIONS

Based on the foregoing reasons, this Permission to file a writ of mandamus should be granted without any further delay!

Respectfully Submitted,

Robert E. Prunty

ROBERT E. PRUNTY,NO. 184-764
Belmont Correctional Camp
P.O. Box 540
St. Clairsville, Ohio 43950
Petitioner, Pro-Se
(740) 695-5169

STATE OF OHIO)
COUNTY OF BELMONT)SS: AFFIDAVIT AND PROOF OF SERVICE

I, ROBERT E. PRUNTY,NO. 184-764, a citizen of the United States and affiant herein; after being cautioned concerning the penalties of perjury; states:
That he is the Petitioner in the foregoing Permission to file a writ of mandamus and Brief in support thereof;
and that all the statements and facts contained herein are true and correct to the best of my knowledge, belief and memory;
and hereby certify that three(3) copies of Permission to file a writ of mandamus was mailed to: Office of the Clerk, U.S. Court Of Appeals, Cincinnati, Ohio 45202;
and that a copy of SAME said documents was mailed to:Mr. Todd R. Marti (0019260), Office of the Attorney General, Corrections Litigation Section, 140 E. Town Street, 14th Floor, Columbus, Ohio 43215-6001 (614) 644-7233, this 27th day of April ,1999, by first class U.S. mail. Postage prepaid.
And that an extra copy of mandamus submitted to the Court for a stamp,file, and return copy to Petitioner.

Robert E. Prunty* 184-764
ROBERT E. PRUNTY,NO. 184-764
Petitioner, Pro-Se
(614) 695-5169

"I Declare(or certify, verify, or state)under penalty of perjury the foregoing is true and correct. Executed on 4/27 ,1999.

Robert E. Prunty* 184-764 "
Signature

APPENDIX-C

AFFIDAVIT OF VERITY OF KEVIN CHRISTOPHER,# 271-169

STATE OF OHIO)
) SS:
COUNTY OF MARION)

I, Kevin E Christopher,
having first been cautioned concerning the penalties for perjury, do hereby solemnly swear on this 25th day of OCTOBER, 1994, that:

I was sitting in the inmate dining room eating breakfast and was sitting at inmate, ROBERT E. PRUNTY'S,#184-764, table when I saw a food-tray fly by inmate, PRUNTY'S head nearly hitting him; then I looked over at the table and saw the inmate whom threw said food-tray, and then I saw this inmate that threw the food-tray, get up and walked out of the inmate dining room...

This incident occurred on OCTOBER 11, 1994, a.m.

Kevin E Christopher
SIGNATURE OF KEVIN CHRISTOPHER,# 271-169

I declare that the foregoing statements are true and correct to the best of my knowledge and memory. Signed this 25th day of OCTOBER, 1994, under the penalty of perjury.

Kevin E Christopher 271-169
SIGNATURE

EXHIBIT-4

APPENDIX-C

AFFIDAVIT OF VERITY OF INMATE, JACKSON,#198-813

STATE OF OHIO)
) SS:
COUNTY OF MARION)

I, Jackson 198-813, having first been cautioned concerning the penalties for perjury, do hereby solemnly swear on this 24th day of OCTOBER,1994, that:

I was sitting in the inmate dining room at the right hand of inmate, ROBERT E. PRUNTY,#184-764, at breakfast on OCTOBER 11, 1994, and with another inmate named CHRISTOPHER; when a food-tray came zooming through the air and it came close to hitting inmate PRUNTY'S head.

Jackson 198-813
SIGNATURE OF INMATE, JACKSON,#198-813

I declare under the penalty of perjury that the foregoing statement is true and correct to the best of my memory and knowledge.

Signed this 28th day of OCTOBER,1994.

Jackson 198-813
SIGNATURE

EXHIBIT-5
APPENDIX-C

PLEASE STAMP, FILE, AND RETURN THIS COPY TO PLAINTIFF***

FILED
93 AUG -5 AM 9:28
TOLEDO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROBERT E. PRUNTY,
Plaintiff
v.
W. BROOKS, et al.,
Defendants.

CASE NO. 3:95CV7308
HONORABLE MAGISTRATE JUDGE:
VERNELIS K. ARMSTRONG
Pursuant to: 42 U.S.C. 1983, 1985 (2)(3), 1986; 28 U.S.C. 1343 (1)(2)(3)(4); Rule 25, Fed. R. Civ. Proc.

JURY TRIAL ENDORSED HEREON

MOTION FOR RECONSIDERATION AND A TRIAL BY JURY

Now comes Plaintiff in Pro-Se pursuant to Rule 7, 38, 39,59, Federal Rules of Civil Procedure; 28 U.S.C. 1404, 1861,1873, 1915(g); hereby respectfully requests the Honorable Court to grant him the above entitled relief for the reasons stated in his memorandum in support attached hereto.

Respectfully Submitted,,
ROBERT E. PRUNTY,NO. 184-764
Belmont Correctional Camp
P.O. Box 540,SIF-20
St. Clairsville, Ohio 43950
Plaintiff, Pro-Se
(614) 695-5169

APPENDIX-D

MEMORANDUM IN SUPPORT

SUMMARY INTRODUCTION:

This MOTION FOR RECONSIDERATION AND A TRIAL BY JURY ensued in response to a MEMORANDUM OPINION AND DECISION filed JULY 22, 1998, by the Honorable Court. And granting Defendants Third Motion For Summary Judgment.

ARGUMENT:

Plaintiff moves for a "Trial by Jury" for the following reasons:

This is a case where Plaintiff served disciplinary time in segregation and is challenging the "Unjustified and Invidious" conduct report written upon him; Sandin v. Conner, 515 U.S. 472,57 CrL 2172(1995)(Prisoners had liberty interst in remaining free of administrative segregation);

and that while Plaintiff were serving time in disciplinary control, named Defendants conspired and retaliated against Plaintiff causing Plaintiff to miss a Court deadline; which consists of "Actual Injury";"Prejudice"; "Grief"; "Intentional Infliction of Pain"; "Hardship and Emotional Distress"; Newsome v. Norris, 888 F. 2d 371(6th Cir.1989); Lewis v. Casey, 116 S. Ct. 2174(1997); Cale, 861 F. 2d at 950;

AND that The Seventh Amendment guaranteed Plaintiff a right to a trial by jury. The Court stated: 1. CONSTRUCTION: "So long as this amendment stands, right to trial by jury should not be rationed, nor should particular issues in particular types of cases be treated differently from similar issues in other types of cases." Connell v. Sears, Roebuck & Co., C.A. Fed. 1983, 722 F. 2d 1542; Ginberg v. Tauber, D.C. App. 1996, 678 A 2d 443, Certiorari denied, 117 S. Ct. 738, 136 L. Ed. 2d 677. See U.S. Const. Amend. Seven; and Rule 38, 39, Federal Rules of Civil Procedure; also 28 U.S.C. 1861, 1873; Dolence v. Flynn,628 F. 2d 1280, 1282(10TH Cir. 1980); U.S. Const. Amend. 14;

Plaintiff moves for a "Change of Venue" for the following reasons:

Plaintiff have filed complaints against Honorable Judge JAMES G. CARR; and now Plaintiff have a 1983 Civil Rights action filed against Honorable Judge DAVID A. KATZ; both of whom are colleagues of Honorable Magistrate Judge VERNELIS K. ARMSTRONG, who resides in this case at bar. And Plaintiff would not receive proper and fair justice in any litigation submitted to this Honorable Court. See In re Murchison, Michigan 1955, 75 S. Ct. 623,349 U.S. 133,99 L. Ed. 942. Therefore, Plaintiff moves for a change of venue "OUT OF THE STATE OF OHIO" and pursuant to 28 U.S.C. 1404.

APPENDIX-D

Wherefore, for the foregoing reasons, Plaintiff moves for a jury trial; and a change of venue and to transfer this action out of the State of Ohio lest manifest injustice injustice result.

Respectfully Submitted,

Robert E. Prunty

ROBERT E. PRUNTY,NO. 184-764
Belmont Correctional Camp
P.O. Box 540, S1F-20
St. Clairsville, Ohio 43950
Plaintiff, Pro-Se
(614) 695-5169

PLEASE NOTE
PLAINTIFF ROBERT E. PRUNTY,NO. 184-764, IS NOW REPRESENTING HIMSELF IN PRO SE IN THIS ACTION***

PROOF OF SERVICE

I hereby certify that two(2) copies of MOTION FOR RECONSIDERATION AND A TRIAL BY JURY was mailed to: CLERK OF THE U.S. DISTRICT COURT, 114 U.S. COURTHOUSE, TOLEDO, OHIO 43624; and a copy of same was mailed to: MS. KAREN L. KILLIAN(0068607), ASSISTANT ATTORNEY GENERAL, CORRECTIONS LITIGATION SECTION, 140 E. TOWN STREET, 14th FLOOR, COLUMBUS, OHIO 43215-6001(614) 644-7233, this 31st day of JULY, 1998, by first class U.S. Mail. Postage prepaid.

An extra copy submitted to Court for a stamp, file, and return copy to Plaintiff, please.

Robert E. Prunty

ROBERT E. PRUNTY,NO. 184-764
Plaintiff, Pro-Se
(614) 695-5169

APPENDIX-D

STATE OF OHIO)

SS: ~~AFFIDAVIT OF ROBERT E. PRUNTY,~~NO. 184-764

COUNTY OF BELMONT)

I, ROBERT E. PRUNTY,NO. 184-764, a citizen of the United States and affiant herein; after being duly cautioned concerning the penalties of perjury; states:

That he is currently incarcerated at Belmont Correctional Camp;

and affiant and Plaintiff in the foregoing MOTION FOR RECONSIDERATION AND A TRIAL BY JURY and MEMORANDUM IN SUPPORT THEREOF;

and that all the facts and statements contained herein are true and correct to the best of his knowledge, belief and memory.

Robert E. Prunty

Signature of Affiant and Plaintiff

"I declare(or certify, verify, or state) under the penalty of perjury the foregoing is true and correct. Executed on JULY 31, 1998.

Robert E. Prunty "

Signature

APPENDIX-D

Please Stamp, File, and Return

FORM TO BE USED BY A PRISONER IN FILING A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42, U.S.C. § 1983

CITING: 42 U.S.C.1985(2)(3);42 U.S.C. 1986; 28 U.S.C. 1343(3)(4)
"JURY DEMAND"

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OHIO

ROBERT E. PRUNTY, (Enter above the full name of the plaintiff in this action) vs. W. BROOKS, Guard, et al., "All Defendants sued in their individual and official capacities" (Enter above the full name of the defendant(s) in this action	CIVIL CASE NO. 3:95CV 7308 JUDGE JUDGE JAMES G. CARR **COMPLAINT**

I. Previous Lawsuits

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment? **YES** ☒ **NO** ☐

B. If your answer to A is yes, describe the lawsuit in the space below, (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit

Plaintiffs ROBERT E. PRUNTY,#184-764 (Pro-Se)

Defendants VICKIE WELLS, et al.,

2. Court (if federal court, name the district; if state court, name the county)

Northern District Of Ohio

3. Docket Number 3:93CV7500

4. Name of judge to whom case was assigned Honorable Judge,JOHN W. POTTER

APPENDIX-D

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

awaiting appeal in The Sixth Circuit Court Of Appeals

6. Approximate date of filing lawsuit SEPTEMBER 1, 1993

7. Approximate date of disposition

II. **Place of Present Confinement** Marion Correctional Institution(hereinafter) MCI

A. Is there a prisoner grievance procedure in this institution? **YES** [X] **NO** [ ]

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure?

YES [ ] **NO** [X]

C. If your answer is YES,

1. What steps did you take?

2. What was the result?

D. If your answer is NO, explain why not Not required (monetary damage suit only)

E. If there is no prison grievance procedure in the institution, did you complain to prison authorities?

YES [ ] **NO** [ ]

C. If your answer is YES,

1. What steps did you take?

2. What was the result?

III. **Parties**

(In item A below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any).

A. Name of the Plaintiff ROBERT E. PRUNTY,#184-764 (Pro-Se)

Address MCI, P. O. Box 57, Marion, Ohio 43301-0057

(In item B below, place the full name of the defendant in the first blank, his or her official position in the second blank, and his or her place of employment in the third blank. Use item C for the names, positions and places of employment of any additional defendants).

B. Defendant W. BROOKS is employed as Guard at MCI

C. Additional Defendants MAYHEW, Guard at MCI; KENNEDY, Sergeant at MCI; RANDY SHEARS, Case Worker at MCI; PRESSLEY,Sergeant at MCI;SHIRLEY A. ROGERS,Warden,MCI

IV. **Statement of Claim**

(State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separated paragraph. Use as much space as you need. (Attach extra sheet(s) if necessary).

(1) Defendant W. BROOKS did on MAY 3, 1995, approximately 6:04 a.m. conspired; retaliated; and obstruct justice by writing a false, unjustified and [illegible] invidious Conduct Report (Class 2, Rules 1,disobedience of a direct order) and(Class 2, Rules 25, out of place) upon Plaintiff. Causing Plaintiff to serve (6) days in disciplinary control; causing Plaintiff to miss his court dead-line of MAY 8, 1995; wherefore, causing Plaintiff to suffer, mental anguish, grief, pain, humiliation, and hardship and emotional distress...

(2) Defendant MAYHEW whom were working with Defendant W. BROOKS on MAY 3,1995, at

(Statement of Claim Continued)

approximately 6:04 a.m. did conspire; retaliate; and obstruct justice by cooperating with Defendant W. BROOKS to bring about said Conduct Report...

(3) Defendant KENNEDY did on MAY 3, 1995, conspire; condone; retaliate; and obstruct justice by co-signing said Conduct Report...

(4) Defendant RANDY SHEARS did on MAY 5, 1995, conspire;retaliate; and obstruct justice when he sit in as Hearing Officer for said Conduct Report...

(5) Defendant PRESSLEY did on MAY 8, 1995, conspire; retaliate; and obstruct justice when he sit in as Chairman of Rules Infractions Board (RIB) and found Plaintiff guilty of said Conduct Report (Class 2, Rule 25, out of place)...

(6) Defendant SHIRLEY A. ROGERS are guilty and liable for the named Defendants actions in this action because she has been put on notice, having knowlwdge and acquiescence of full-scale prison conspiracy of substantial constitutional violations of Plaintiff's rights by prison officials; also Plaintiff have filed several lawsuits upon Defendant SHIRLEY A. ROGERS; and Plaintiff have a lawsuit filed upon Defendants' RANDY SHEARS; SERGEANT PRESSLEY; and have filed complaints upon SERGEANT KENNEDY. Plaintiff had been preparing his writ of certiorari entitled: PRUNTY v. BRANSON,et al., NO. 94-3916, and needed only a couple more days to meet his (90) day dead-line to submit his certiorari to the United States Supreme Court; but due to being locked up in O-Block and being unable to attain his requested legal materials, was unable to submit said certiorari to the U. S. Supreme Court for dead-line of approximately MAY 8, 1995 ...

APPENDIX-D

V. **Relief**

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes).

Plaintiff respectfully request the Honorable Court to award him one millions dollars ($1,000,000) for redress and compensated in punitive and exemplary damages for suffering pain, grief, undue hardship, humiliation and emotional distress. And to appoint counsel to represent him for Plaintiff have no adequate remedy at law!

Signed this 10th day of MAY, 19 95.

I declare under penalty of perjury that the foregoing is true and correct.

MAY 10, 1995
(Date)

Robert E. Prunty/134764
(Signature of Plaintiff) (Pro-Se)

APPENDIX-D

TERMED APPEAL
PJM CONMAG
CAT 03

U.S. District Court
Northern District of Ohio (Toledo)

CIVIL DOCKET FOR CASE #: 95-CV-7308

Prunty v. Brooks, et al Filed: 05/22/95
Assigned to: Mag. Judge Vernelis K. Armstron ury demand: Both
Demand: $1,000,000 Nature of Suit: 550
Lead Docket: None Jurisdiction: Federal Question

Cause: 42:1983 Prisoner Civil Rights

ROBERT E PRUNTY
plaintiff

J. Dean Carro, Esq.
[COR LD NTC]
University Of Akron
302 East Buchtel
Akron, OH 44325-2901
330-972-7751

v.

W BROOKS, Guard
defendant

Todd R. Marti, Esq.
[COR LD NTC]
Cary Matthew Cooper, Esq.
614-644-6001
[COR LD NTC]
Office Of The Attorney General
Corrections Litigation Section
140 East Town Street
14th Floor
Columbus, OH 43215-6001
614-644-7233
FTS 728-9327

GUARD MAYHEW
defendant

Miltina A. Hicks, Esq.
[term 01/25/96]
614-644-7233
26th Floor
[COR LD NTC]
Office Of The Attorney General
State Office Tower
30 East Broad Street
Columbus, OH 43215-3428
FTS 466-5087

APPENDIX-E

Todd R. Marti, Esq.
(See above)

TERMED APPEAL
PJM CONMAG
CAT 03

[COR LD NTC]
Cary Matthew Cooper, Esq.
(See above)
[COR LD NTC]

SERGEANT KENNEDY
defendant

Miltina A. Hicks, Esq.
[term 01/25/96]
(See above)
[COR LD NTC]

Todd R. Marti, Esq.
(See above)
[COR LD NTC]
Cary Matthew Cooper, Esq.
(See above)
[COR LD NTC]

RANDY SHEARS, Case Worker
defendant

Miltina A. Hicks, Esq.
[term 01/25/96]
(See above)
[COR LD NTC]

Todd R. Marti, Esq.
(See above)
[COR LD NTC]
Cary Matthew Cooper, Esq.
(See above)
[COR LD NTC]

SERGEANT PRESSLEY
defendant

Miltina A. Hicks, Esq.
[term 01/25/96]
(See above)
[COR LD NTC]

Todd R. Marti, Esq.
(See above)
[COR LD NTC]
Cary Matthew Cooper, Esq.
(See above)
[COR LD NTC]

SHIRLEY A ROGERS, Warden
defendant

Miltina A. Hicks, Esq.
[term 01/25/96]
(See above)
[COR LD NTC]

APPENDIX-E

Todd R. Marti, Esq.
(See above)
[COR LD NTC]
Cary Matthew Cooper, Esq.

(See above)
[COR LD NTC]

APPENDIX-E

5/22/95	--	FILING FEE IFP: on 5/22/95. (cma) [Entry date 05/24/95]
5/22/95	1	COMPLAINT (Service: summons NOT issd, magistrate consent form issd) (5 pgs); summs, USM-285 iss'd 6/27/95 per PSLC (cma) [Entry date 05/25/95] [Edit date 06/27/95]
5/22/95	2	CIS filed by plaintiff. Recommended Track: expedited (1 pg) (cma) [Entry date 05/25/95]
5/25/95	3	LETTER to pltf re: ref to pro-se law clerk. File to PSLC 5/25/95 (1 pg) (cp)
7/10/95	4	RETURN (6) OF SERVICE executed upon dfts: W Brooks, Randy Shears, Sergeant Pressley, Shirley A Rogers, Guard Mayhew, Sergeant Kennedy on 6/29/95 (18 pgs) (ml)
7/20/95	5	MOTION by defts' Randy Shears, Sergeant Pressley, Shirley A Rogers, Guard Mayhew, Sergeant Kennedy for attorney Meltina A. Hicks to appear pro hac vice (5 pgs) (als) [Entry date 07/24/95]
7/20/95	6	ANSWER to Complaint by defts' Randy Shears, Sergeant Pressley, Shirley A Rogers, Guard Mayhew, Sergeant Kennedy; jury demand (5 pgs) (als) [Entry date 07/24/95]
7/28/95	--	MARGINAL ENTRY ORDER: granting motion for attorney Meltina A. Hicks to appear pro hac vice on behalf of defts Shears, Pressley, Rogers, Mayhew, Kennedy [5-1] (issued on 7/28/95) Judge James G. Carr (ml) [Entry date 08/01/95]
7/28/95	7	ORDER: In lieu of CMC, it is sua sponte; Track Designation: expedited; Parties shall w/in 60 days disclose; dfts file mot to dism or f/judg on pldgs w/in 4 wks; all further disc stayed pending adjuicatin of mot; If no mot filed disc ddl 120 days; If dfts file mots ddl 180 days; If no mots, the parties shall file status report 180 days at which time a trial date shall be assigned. (issued on 7/28/95) (2 pgs) Judge James G. Carr (ml) [Entry date 08/01/95]
1/25/96	8	MOTION by all defendants for summary judgment (16 pgs) (vl) [Entry date 01/26/96]
1/25/96	9	MOTION by defendants' counsen Todd Marti for attorney Cary Matthew Cooper to appear pro hac vice (1 pgs) (bp) [Entry date 01/29/96]
1/25/96	10	ATTORNEY SUBSTITUTION: terminating attorney Miltina A. Hicks for Sergeant Kennedy, Guard Mayhew, Shirley A Rogers, Sergeant Pressley, Randy Shears and substituting attorney Todd R. Marti, C. Matthew Cooper. (1 pgs) (bp) [Entry date 01/29/96]

APPENDIX-E

1/26/96	11	MOTION by all defendants to supplement mot f/sj w/faxed afdt of Jackie Burns (12 pgs) (vl) [Entry date 01/30/96]
2/2/96	--	MARGINAL ENTRY ORDER: granting motion for attorney Cary Matthew Cooper to appear pro hac vice for dfts [9-1] (issued on 2/2/96) Judge James G. Carr (tc) [Entry date 02/06/96]
2/7/96	--	MARGINAL ENTRY ORDER: granting defts' motion to supplement mot f/sj w/faxed afdt of Jackie Burns [11-1] (issued on 2/7/96) Judge James G. Carr (bp) [Entry date 02/08/96]
2/8/96	12	MOTION by defendants to supplement the record w/orig afdt of Jackie Burns (11 pgs) (vl) [Entry date 02/09/96]
2/9/96	13	Marg Entry Order dtd 2/2/96 re: mot f/admis pro hac vice mailed to Robert E. Prunty was returned marked "not deliverable as addressed." (cma) [Entry date 02/12/96]
2/12/96	--	MARGINAL ENTRY ORDER: granting motion to supplement the record w/orig afdt of Jackie Burns [12-1] (issued on 2/12/96) Judge James G. Carr (tc) [Entry date 02/13/96]
2/13/96	14	RETURNED Order of 2/7/96 as to Robert E. Prunty marked "Unable To Forward". (bp) [Entry date 02/15/96]
2/20/96	15	RETURNED Order of 2/12/96 as to Robert E. Prunty marked "Not Deliverable as Addressed, Unable to Forward". (bp) [Entry date 02/21/96]
3/1/96	16	ORDER: pltf to file opp to mot f/SJ in compliance with Fed.R.Civ.P. 56(e) by 4/1/96 or SJ will be gr w/prej. (issued on 3/1/96) (1 pgs) Judge James G. Carr (bp)
3/4/96	17	MOTION by plaintiff for leave to file opp to mot f/SJ, to compel discovery (5 pgs) (bp) [Entry date 03/05/96]
3/7/96	18	RETURNED Order of 3/1/96 as to Robert E. Prunty marked "Not Here". (bp) [Entry date 03/08/96]
4/22/96	19	ORDER: granting pltf's motion for leave to file opp to mot f/SJ [17-1] opp due 5/10/96; overruling pltf's motion to compel discovery [17-2] (issued on 4/22/96) (2 pgs) Judge James G. Carr (ml) [Entry date 04/23/96]
5/6/96	20	REPLY by plaintiff to defts' mot f/SJ [8-1] (14 pgs) (bp) [Entry date 05/09/96]
5/6/96	20	AND MOTION by plaintiff for summary judgment (bp) [Entry date 05/09/96]
5/17/96	21	OPPOSITION by defendants to pltfs's motion for summary judgment [20-1] (3 pgs) (ml)

APPENDIX-E

7/25/96	22	ORDER: telephone conf held 7/16/96; Dean Carro, University of Akron School of Law is appointed counsel for pltf; copy of this order is to be mailed to pltf; Clerk to copy file & send to Mr. Carro; statrpts due 8/30/96; ptys to indicate if they consent to jurisdiction of US Mag and advise re. need to set ddls & related issues. (issued on 7/25/96) (1 pgs) Judge James G. Carr (bp) [Entry date 07/26/96]
7/25/96	23	MEMORANDUM AND ORDER: den pltf's mot f/SJ [20-1], gr defts' mot f/SJ as to pltf's claim that defts retaliated against him by placing him in disciplinary control and den defts' mot f/SJ as to pltf's claim that defts retaliated against him by den him accss to his legal materials. [8-1] (issued on 7/25/96) (5 pgs) Judge James G. Carr (bp) [Entry date 07/26/96]
8/16/96	24	MOTION (second) by defendant for summary judgment pursuant to Civil rule 56 on pltf's remaining claim (24 pgs) (bp) [Entry date 08/19/96]
8/22/96	25	NOTICE of appeal by pltf-applnt re memo & order [23-1] (cc: all counsel-notice only. USCA-notice doc(s) mailed on 8/23/96) (1 pg) (cma) [Entry date 08/23/96]
8/30/96	26	STATUS Report by plaintiff (2 pgs) (bp) [Entry date 09/04/96]
9/3/96	27	STATUS Report by defendants (1 pgs) (bp) [Entry date 09/05/96]
9/10/96	28	SUPPLEMENTAL by defendant to status report [27-1] (1 pgs) (bp) [Entry date 09/12/96]
9/16/96	29	ACKNOWLEDGMENT from USCA for the 6th Circuit of receipt of pltf-applnt's Notice of Appeal (USCA #: 96-3981) - dt rcvd 8/29/96; dt filed 9/12/96 (2 pgs) (cma) [Entry date 09/17/96]
9/18/96	30	TRUE cy of order from USCA dismissing the appeal [25-1] upon pltf-applnt's mot to voluntarily dismiss its case in 6th Cir.; Clerk: L. Green; order issd 9/16/96; Cost: none (1 pg) (cma) [Entry date 09/19/96]
9/26/96	31	ORDER: upon consent of parties, this case transferred to Mag. Judge Vernelis K. Armstrong for final disposition; any appeal shall be taken to the US Cout of Appeals for this circuit. (issued on 9/26/96) (1 pgs) Judge James G. Carr (bp) [Entry date 09/27/96]
9/27/96	32	RESPONSE by plaintiff to dft's second motion for summary judgment pursuant to Civil rule 56 on pltf's remaining claim [24-1] (4 pgs) (bp)

APPENDIX-E

10/9/96	33	REPLY by defendants' to pltf's resp to dfts' 2nd mot f/SJ [24-1] (3 pgs) (bp) [Entry date 10/10/96]
11/1/96	34	ORDER: telephone conf held 10/31/96; telephone pretrial conference 12:00 11/4/96 before the Hon Vernelis K. Armstrong, US Mag Judge (issued on 11/1/96) (1 pgs) Judge James G. Carr (bp) [Entry date 11/04/96]
11/5/96	35	ORDER: telephonic status conference held 11/4/96, Track Designation: standard; dispositive mots are beforethe court & the case is now decisional; further stat conf may be sched at the req of counsel. (issued on 11/5/96) (2 pgs) Mag. Judge Vernelis K. Armstrong (bp) [Entry date 11/08/96]
6/17/97	36	MEMORANDUM OPINION AND DECISION; denying dft's second motion for summary judgment pursuant to Civil rule 56 on pltf's remaining [24-1] (issued on 6/17/97) (7 pgs) Mag. Judge Vernelis Armstrong (bp) [Entry date 06/20/97]
9/15/97	37	ORDER: telephone stat conf held 9/12/97 a settlement conf was sched at 12:30 10/20/97 (issued on 9/15/97) (2 pgs) Mag. Judge Vernelis K. Armstrong (bp) [Entry date 09/23/97]
9/18/97	38	ORDER: settlement conf sched for 10/20/97 is vac; dfts are gr lv to file a SJ mot by 10/20/97; opp 11/3/97; rply 11/10/97. (issued on 9/18/97) (1 pgs) Mag. Judge Vernelis K. Armstrong (bp) [Entry date 09/24/97]
1/9/98	39	MOTION (third) by defendants' for summary judgment (9 pgs) (bp) [Entry date 01/12/98]
1/20/98	40	MOTION by defendants' to supplement the record with the original afdts of Lt. Jerry Pressley & Major Randy Fox (5 pgs) (bp) [Entry date 01/22/98]
1/22/98	--	MARGINAL ENTRY ORDER: granting dfts' motion to supplement the record with the original afdts of Lt. Jerry Pressley & Randy Fox [40-1] (issued on 1/22/98]) Mag. Judge Vernelis K. Armstrong (bp) [Entry date 01/23/98]
1/22/98	41	AFFIDAVIT of Lt. Jerry Pressley regarding motion for summary judgment [39-1] (2 pgs) (bp) [Entry date 01/23/98]
1/22/98	42	AFFIDAVIT of Major Randy Fox regarding motion for summary judgment [39-1] (1 pgs) (bp) [Entry date 01/23/98]
1/28/98	43	OPPOSITION by plaintiff to dfts' third motion for summary judgment [39-1] (9 pgs) (bp) [Entry date 01/29/98]
2/13/98	44	REPLY by defendant to pltf's opp to dft's third motion for summary judgment [39-1] (3 pgs) (bp) [Entry date 02/19/98]

APPENDIX-E

7/22/98	45	MEMORANDUM OPINION AND DECISION: dfts' third motion for summary judgment is gr and all claims of retaliation, denial of legal materials & conspiracy against dfts' Brooks, Mayhew, Pressley, Kennedy, Shears & Rogers is dism. [39-1] dismissing case (issued on 7/22/98) (7 pgs) Mag. Judge Vernelis K. Armstrong (bp) [Entry date 07/28/98]
7/23/98	46	JUDGMENT ON DECISION BY COURT: dft's third mot f/SJ is gr & all claims of retaliation, denial of legal materials & conspiracy against dfts' Brook, Mayhew, Pressley, Kennedy, Shears & Rogers are dism. (issued on 7/23/98) (1 pgs) Mag. Judge Vernelis K. Armstrong (bp) [Entry date 07/29/98]
8/5/98	47	POST-JUDGMENT MOTION by plaintiff for reconsideration (4 pgs) (bp) [Entry date 08/07/98]
8/5/98	47	AND DEMAND for jury trial by plaintiff (bp) [Entry date 08/07/98]
1/6/99	48	MEMORANDUM DECISION AND ORDER: pltf's motion for reconsideration is den. [47-1] (issued on 1/6/99) (3 pgs) Mag. Judge Vernelis K. Armstrong (bp) [Entry date 01/08/99]
2/2/99	49	NOTICE of appeal by pltf re order fld 1/6/99 [48-1] (cc: all counsel-notice only. USCA-notice and doc(s) mailed on 2/3/99) (2 pgs). NO FEE PAID. (cma) [Entry date 02/03/99] [Edit date 02/03/99]
2/2/99	50	FINANCIAL APPLICATION FOR APPEAL by pltf-applnt (6 w/2 exh pgs) (cma) [Entry date 02/03/99]
2/2/99	51	Motion by pltf-applnt to transmit record on appeal. (cma) [Entry date 02/03/99]

APPENDIX-E

Exhibit T-1

7-15-97

Captain mariner - on Friday evening
at 7-11-97, at inmate Dining Room line, while
you was on duty, inmate
6-House, did deliberately inflict unnecessary bodily
Contact upon me while jumping (now line. This some
influenced inmate have
This some type of Behavior.

You see, sir, I am a Victim (Victim) of a
full-scale Prison Conspiracy & Retaliation by)
Prisons authorities and influenced inmates Because I
have legal action filed against several Prison
officials. you may remember I gave you a
" stick" on 4-6-96, that I found in my Cell
bags and Recently swallowed. I should bring
this matter to your attention

when in dining Room, Keep
eye out for your, Robert
Problems let me Know

Ma... 7.11.97

Ex-1
APPENDIX-F

STATE OF OHIO)
COUNTY OF BELMONT)SS: AFFIDAVIT OF ROBERT E. PRUNTY,NO. 184-764

I, ROBERT E. PRUNTY,NO. 184-764, a citizen of the United States and affiant herein; and after being cautioned concerning the penalties of perjury; declare's and says:

That he is currently incarcerated at Belmont Correctional Camp, located in St. Clairsville, Ohio;

And that on JULY 27, 1998, at approximately 8:50 A.M., ARTHUR TATE,JR. Warden, ordered Plaintiff handcuffed and marched to his Office in regards to a complaint dated JULY 17, 1998, submitted to MR. REGINALD A. WILKINSON, Defendant in another case entitled: PRUNTY v. WILKINSON, et al., Case No. C-2-1294, that was dismissed in this Honorable COurt; now awaiting appeal process;

And that said letter dated JULY 17, 1998, informed MR. REGINALD A. WILKINSON about how inmates was inflicting physical abuse upon me; and how an inmate threw a chair at me; and how LT. NICKERSON, Defendant in another Civil Rights case, was placing Plaintiff's enemies near him etc to aggravate and cause Plaintiff problems; but ARTHUR TATE, JR., threatened to lock Plaintiff in segregation for pleading to MR. REGINALD A. WILKINSON, Directon Of Ohio's prisons;

and that Plaintiff did not want to be locked in segregation and told MR. ARTHUR TATE, JR., that Plaintiff would not file any more complaints; even though the complaint of JULY 17, 1998, informed MR. WILKINSON that Plaintiff's life and safety was in imminent danger; MR. TATE then allowed Plaintiff to go back to Belmont Correctional (honor) Camp; since then, Plaintiff have suffered physical abuse of one kind of another; aggravation from prison staff and inmates; and on JULY 31, 1998, a guard came and ordered Plaintiff out of the law library so that a college class could have the library, and Plaintiff was working on and typing a legal document that had a short fuse Court deadline of AUGUST 2, 1998....

Plaintiff prays for adequate relief from the Honorable Court(an injunction)as prayed for in the original complaint filed: PRUNTY v. HON. JUDGE GEORGE C. SMITH, NO. C-2-98-683, filed JULY 6, 1998; for Plaintiff's life and safety is in imminent danger!

Robert E. Prunty, #184-764
Signature of affiant and Plaintiff

"I Declare(or certify, verify, or state) under penalty of perjury the foregoing is true and correct. Executed on AUGUST 10, 1998.

EXHIBIT-2
APPENDIX-F

Robert E. Prunty, #184-764
Signature "

STATE OF OHIO)
COUNTY OF BELMONT) SS: AFFIDAVIT OF ROBERT E. PRUNTY,NO. 184-764

I, ROBERT E. PRUNTY,NO. 184-764, states under the penalty of parjury and says:

1. That on October 29, 1998, at 2:20 P.M., I went to MS. REIHLE'S office and explained to her (Case Manager at Belmont Correctional Camp) that I had a Court deadline of November 1, 1998, and would appreciate it if she would notarize my AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS for me. But she shook her head and said, "NO!"

2. I then left her office and informed MR. YAGER, Case Manager at Belmont Correctional Camp, the same story; and MR. YAGER said, "Okay." And I followed him into his office where he took my I.D. Badge and looked at it and at my "IFP" document and after reading it he said, "Where are your envelope you're going to mail this out in?" And I said that another inmate was using the typewriter and I haven't had a chance to type and address my envelope yet. MR. YAGER said, "NO, I can't notarize your document."

3. On 8/11/98, I went to sign for legal mail, and MR. YAGER was sitting in the office. And just as I turned around to come out, MR. YAGER deliberately stuck his foot out and I nearly tripped over his foot.

4. That I have expenience physical abuse from State employees and influenced inmates every day I have been incarcerated at Belmont Correctional Camp and Institution; and a continuing violations of my Constitutional rights; as well as life-threatening situations and I am under imminent danger of serious physical injury; and I plead for adequate relief from the Honorable Court as promptly as possible.

Robert E. Prunty 184-764
Signature of Affiant

"I Declare(or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on October 29, 1998.

Robert E. Prunty 184-764"
Signature

EXHIBIT-3
APPENDIX-F

STATE OF OHIO } SS: AFFIDAVIT OF ROBERT HUPP, NO. 264-059
BELMONT COUNTY }

I, Robert Hupp, DECLARE UNDER PENALTY OF PERJURY, AND SAYS:

1. I AM CURRENTLY INCARCERATED AT BELMONT CORRECTIONAL INSTITUTION.

2. ON JANUARY 10, 1997, FRIDAY AFTERNOON, I WAS SQUATTING DOWN BESIDE THE WALL, NEXT TO THE DOOR IN TV ROOM, WATCHING THE VIDEO AS I DO MOST AFTERNOONS.

3. INMATE PRUNTY COME UP TO ME AND ASKED ME A QUESTION.

4. I ALSO NOTICED THIS OTHER INMATE THAT WAS SITING OVER FROM ME, SUDDENLY JUMPS UP FROM HIS CHAIR AND STOOD-WATCHING INMATE PRUNTY INTENSLY.

5. SOON AS INMATE PRUNTY STARTED TO MOVE AWAY FROM ME, THIS INMATE ALSO MOVED IN FRONT OF INMATE PRUNTY - AND THIS OTHER INMATE THAT WAS SITING AND ALSO WATCHING INMATE PRUNTY, CLOSELY, ABRUPTLY SLID HIS CHAIR RIGHT INTO INMATE PRUNTY'S PATHWAY - AND THIS CAUSED INMATE PRUNTY TO CRASH AGAINST AND INTO THIS INMATE'S CHAIR.

APPENDIX-F
Exhibit - 6

Affidavit of Robert Nupp, No. 264-059, Page Two

6. Further Affiant Sayeth Naught.

Robert Nupp 264-059
SIGNATURE OF AFFIANT/WITNESS

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on January 15, 1997.

Robert Nupp 264-059
SIGNATURE

Pursuant to: 28 U.S.C.A. 1746 (2)

AFFIDAVIT OF VERITY OF WITNESS, JOHN BRAWLEY,# 280-518

STATE OF OHIO)
) SS:
COUNTY OF MARION)

I, John Brawley - 280-518, a citizen of the United States, and inmate incarcerated at Marion Correctional Institution, Marion, Ohio, does hereby depose and say:

1. that I was sitting in Mr. James F. Ferguson;s office on the morning of FEBRUARY 18, 1994, when inmate, Robert E. Prunty,# 184-764, was ordered into the office by Mr. James F. Ferguson;

2. That inmate, Robert E. Prunty, was escorted by guard W. Carver;

3. that the conversation between Mr. James F. Ferguson and inmate Prunty was about inmate, Prunty's porter's job;

4. then Mr. James F. Ferguson got angry and ordered inmate, Robert E. Prunty,# 184-764, from his office;

5. then inmate, Prunty, begin to walk to the door and while going to the door, turned his head and asked Mr. James F. Ferguson could he go to the law library;

6. Mr. James F. Ferguson then hollered at inmate Prunty and charged towards him and ordered inmate Prunty to turn around, pulling inmate Prunty around;

7. then Mr. James F. Ferguson pushed inmate, Robert E. prunty, # 184-764, against the door and pulled his hands behind him, hand-cuffed inmate Prunty, and ordered guard W. Carver to take inmate Prunty out of his office;

8. then inmate Prunty was taken to O-Block;

9. that inmate Prunty did not refuse to leave Mr. James F. Ferguson's office on the morning of FEBRUARY 18, 1994.

John C. 280-518
SIGNATURE OF WITNESS

I declare under the penalty of perjury, that the foregoing is true and correct. Signed this 1st day of JUNE, 1994

John C. 280-518
JOHN BRAWLEY,# 280-518

STATE OF OHIO)
) SS: AFFIDAVIT OF VERITY OF WITNESS,GEORGE E. DUFF,#197-050
COUNTY OF MARION)

I, George E Duff, having first been cautioned concerning the penalties of perjury, do hereby solemnly swear on this 29 Th day of JUNE,1994, that:

1. I was behind inmate ROBERT E. PRUNTY,#184-764,while going through the dining room at breakfast, and saw this inmate that was serving the oat-meal,came down the chow line reaching for inmates' bowls to put oat-meal in and when he got to inmate Prunty, inmate Prunty informed this inmate that he did not want any. This inmate then told inmate Prunty in a sarcastic way to:"Beat it! Get on down the line then!" Guard Dean was on duty that morning and listening and observing. But inmate ROBERT E. PRUNTY could not go anywhere nor any of the rest of us because the line was being held up. Inmate Prunty ignored this inmate but he kept inflicting verbal abuse upon inmate Prunty by saying things like:"That's your problem! Just get on down the line!" Inmate Prunty then tried to reason with this inmate but more harsh words from the inmate working the chow line were thrown at inmate Prunty. Then the line finally started moving and we went on through the chow line. On several other occasions I have been behind inmate Robert E. Prunty going through the chow lines and every time some inmate of guard or food service employee would deliberately harass this inmate or try to create difficulty for inmate Prunty in some way;like refusing to give inmate Prunty his fair porton of food etc the same as everyone else.

George E Duff 197-050
SIGNATURE OF WITNESS,GEORGE E. DUFF,#197-050
Marion Correctional Institution
Post Office Box 57
Marion, Ohio 43301-0057

I declare under the penalty of perjury, the foregoing is true and correct. Signed this 29th day of JUNE,1994.

George E Duff-197-050
INMATE WITNESS,GEORGE E. DUFF,#197-050

The above named inmate witness will be subjected to retaliations and punishment

APPENDIX-F Exhibit - A 8

STATE OF OHIO)
COUNTY OF BELMONT) SS: AFFIDAVIT OF ROBERT E. PRUNTY,NO. 184-764

I, Robert E. Prunty,#184-764, an inmate incarcerated at Belmont Correctional Camp; states under the penalty of perjury and says:
That on June 9, 1999, approximately 2:15 P.M., I went into Mrs. Bober's office where I seen Mr. Yager, Case Manager, sitting behind the desk; and asked him to notarize my affidavits in the matter of: ROBERT E. PRUNTY v. STATE OF OHIO, NO. 50367, being submitted to the Supreme Court of Ohio; and that I needed copies of my JOURNAL ENTRY AND OPINION; But Mr. yager refused to notarized these documents and also refused to make any copies for me; claiming that he does not know for sure if I am indigent or not or if these affidavits are true or not; Mr. Yager also wanted to read and keep these legal documents and wait until I have an envelope addressed and ready for mail before he notarized these documents; and that I could not get these documents into the mail on June 9, 1999; and that Mr. Yager's actions caused me to suffer actual injury; extreme prejudice; duress; intentional infliction of pain and emotional distress; and that Mr. Yager have refused to notarize my documents before and on October 29,1998; which are being presented to the Federal Courts as EXHIBIT-3.

Robert E. Prunty, #184-764
Signature of Affiant

"I Declare(or certify, verify, or state)under penalty of perjury the foregoing is true and correct. Executed on June 9, 1999.

Robert E. Prunty, #184-764"
Signature

APPENDIX-F

EXHIBIT-10

STATE OF OHIO)
COUNTY OF BELMONT) SS: AFFIDAVIT OF ROBERT E. PRUNTY,# 184-764

I, Robert E. Prunty,#184-764, a citizen of the United States affiant herein after being cautioned concerning the penalties of perjury; states:
That I am currently incarcerated at Belmont Correctional Camp; and that on June 18, 1999, when I was going to the window to dump my noon-meal food tray, this inmate that works in the inmate barber shop(black inmate)shot his elbow out and hit me in my right side hurting me and also causing me pain and emotional distress because I believe the prison officials influenced this inmate and other inmates to inflict physical and verbal abuse upon me as a way of retaliating against me for pursuing my rights through a court of law;
On January 27, 1999, while I was standing in the commissary line, another inmate (McAfee) (and friend of the aforementioned inmate)(and whom have inflicted physical abuse upon me before) came by and hit me in my back causing me great pain; and I noted that on January 28, 1999, this inmate was rewarded a prestigeous type of job working in the barber shop; and I believe prison officials also influenced this inmate to inflict physical abuse upon me;
During the month of May/1999, just as I was leaving the inmate diniмg room, a food service worker on duty at dinner time shoved his right elbow into my stomach. Causing me great pain, humilitation and emotional distress. C/O Reminar and C/O Gould was looking on as per usual when I am inflicted with physical abuse or disrespected by allowing inmates to cut the lines in fron of me;
And that during the month of June/1999, when I was suffering excruciating pain from the tooth ache, I had a pass to go to see the Dentist; and when I was trying vainly to get the usual C/O to escort me on my pass; C/O Mason hollered indignantly and told me to shut up! And when I asked him in a nice way, "What time do you get off duty?" And C/O Mason responded, with, "None of your business!" And that I have experienced physical abuse or verbal abuse nearly every day I have been incarcerated at Belmont Correctional Camp or Institution.

Robert E. Prunty, #184-764
Signature of Affiant

"I Declare(or certify, verify or state)under penalty of perjury the foregoing is true and correct. Executed on June 18, 1999.

Robert E. Prunty, #184-764 "
Signature

EXHIBIT-11
APPENDIX-F

Ex 6-19-95 — 4C1 C2

DISPOSITION OF GRIEVANCE

INSTITUTION: Marion Correctional
TO: INMATE: Prunty, Robert
NUMBER: 184-764
GRIEVANCE NO.: 6-95-27
DATE: 06-19-95

Your grievance, filed on 06-19-95 (date), has been reviewed and disposed of as follows:

___ 1. The grievance has been investigated and resolved through the following actions taken by this office:

___ 2. The grievance has been investigated and resolution is beyond the scope of the authority of this office. All findings and recommendations have been referred to the Managing Officer for his endorsement, modification or disapproval.

___ 3. The grievance has been investigated and rejected because it is without merit for the following reason(s):

___ 4. The grievance has been rejected because you have failed, without just cause, to attempt to resolve your problem by contacting _____, who is able to discuss the problem with you. Once you comply with the procedure, you may file a new grievance if not satisfied with the result.

___ 5. The disposition of this grievance will be delayed longer than ten working days for the following reason(s):

___ 6. The disposition of this grievance will be delayed longer than 15 working days and you are requested to approve this extension. DO/DO NOT APPROVE

Inmate Signature — Date

RESPONSE TO #_____:

You stated in your grievance that Officer Mayhew will not sign your Law Library passes until 12:45 P.M., and they are for 1:00 P.M.. You stated this results in being too late for the law research books and typewriters.

This matter was previously grieved by you in grievance #8-94-39. That grievance was appealed to the Chief Inspector, and did receive response. The practice that is occurring at this time and that was described in your grievance is what was approved by the office of the Chief Inspector.

Further action by this office is not warranted. This grievance has previously received response.

NOTE: Chief Inspector David A. Turner condoned Prison officials and defendant Mayhew's actions, Plaintiff have a Lawsuit filed against Chief Inspector, David A. Turner.

Exhibit-B # 12

APPENDIX-F

If you wish, you may appeal this decision to the Chief Inspector within five working days from receipt of this disposition. Appeal Forms are available in the Office of the Inspector of Institutional Services.

Inspector of Institutional Services
Larry Yoder

WHITE - INSPECTOR CANARY & PINK - INMATE
DRC 4089 (Rev 6/87)

5-3-95

Dear Sgt. Pressley:

I am now in O-Block, Cell 62 and I need my legal material for Prunty v. Branson, et al. Case at which I am almost through with a Certiorari for a Court dead line of 5-8-95. I am also sending a vault Request form for my legal material.

Sincerely,
Prunty 184-764
O-Block 62

Exhibit-13
APPENDIX-F

Exhibit-13

5-3-95

Dear Sgt. Pressley:

I am now in O-Block, Cell 62 and I need my legal material for Prunty v. Branson, et al. Case at which I am almost through with a Certiorari for a Court dead line of 5-8-95. I am also sending a vault Request form for my legal material.

Sincerely,
Prunty 184-764
O-Block 62

Exhibit-13
APPENDIX-F

VAULT REQUEST FORM

:Robert E. Prunty NUMBER: 184-764 DATE: 5-3-95

ICE YOU HAVE BEEN ASSIGNED TO THE DISCIPLINARY CELLBLOCKS, YOU WILL HAVE ONE (1) PPORTUNITY TO REQUEST ITEMS FROM YOUR PACKED-UP PROPERTY STORED IN THE VAULT. THE OLLOWING LIST IS WHAT YOU ARE PERMITTED. MARK YOU REQUESTS CLEARLY. IF YOUR EQUEST IS NOT CLEARLY WRITTEN, THE OFFICER WILL NOT FILL IT. GIVE THIS COMPLETED ORM TO THE CELLBLOCK OFFICER. THE VAULT OFFICER WILL NEED YOUR LOCK COMBINATION.

OCK COMBINATION: 36-16-6 DATE GIVEN TO OFFICER: 5-3-95

TEM DESCRIPTION	LIMIT	REQUESTED	VAULT OFFICER COMMENTS
NMATE MANUAL	1		
ARDBOUND BOOKS-	2		
AMILY PHOTOS	5		
APERBACK BOOKS/MAGAZINES/O-BLOCK ONLY	5		
LASSES/DENTURES(circle one)	1pr.		
ERSONAL ADDRESS BOOK	1		
IBLE/KORAN	1	1 Bible	
LAYING CARDS	1		
TOOTHBRUSH/TOOTHPASTE	1ea.		
DEODORANT	1	1 deodorant	
BAR OF SOAP	1		
BOTTLE OF LOTION	1		
UNDERSHIRTS (WHITE ONLY)	3		
INSULATED UNDERWEAR (WHITE ONLY)	1pr.		
SOCKS	3pr.		
SHOES (STATE OR TENNIS)	1pr.		
UNDERSHORTS	3		
SHOWER SHOES	1		
HANDKERCHIEFS	2		
PENS/PENCILS	2ea.	2 pens	
WATCH	1		
RING	2		
COMB OR PICK	1		
RELIGIOUS MEDAL	1		
WRITING MATERIAL		Typing Paper	
ANY PRESCRIBED MEDICATION			
SCHOOL BOOKS (LIST TYPE) APPENDIX-F			
LEGAL MATERIALS- EXHIBIT-14		+ Law books	FRCP
DESCRIBE FILES OR FOLDERS		PRUNTY V. BRIGHAM	

Exhibit-Ry
Exhibit-14

HE VAULT OFFICER WILL FILL YOUR REQUEST. YOU ARE TO SIGN THIS FORM AS A RECEIPT OF HE NOTED ITEMS ARE ISSUED TO YOU BY THE CELLBLOCK OFFICER. THIS FORM WILL THEN BE LACED ON YOUR PACK-UP LIST AS VERIFICATION OF RECEIPT AND REMOVAL FROM YOUR PACK-UP.

OMPLETED BY VAULT OFFICER:_____ DATE:_____

The University of Akron

Legal Clinic/Appellate Review Office
School of Law
Akron, OH 44325-2901
216-972-7751 216-258-2343 Fax

July 2, 1996

Robert E. Prunty, #184-764
Belmont Correctional Institution
P.O. Box 540
St. Clairsville, Ohio 43950-0540

Re: Civil Rights Right of Access Claim

Dear Mr. Prunty:

I have been asked by the United States District Court Judge Carr to represent you in your pending action. I have agreed to represent you in this case.

The clerk has sent me your complete file. I would appreciate it if you would do the following. First, please put my name on your visitor's list as your attorney of record. Second, please sit down and write out exactly what problems you are intending to litigate and what your various positions are on those problems. I will attempt to meet with you in the very near future, but in the meantime I do need this information.

Sincerely,

J. Dean Carro
Attorney at Law
COORDINATOR OF APPELLATE REVIEW

JDC/vsm

G

APPENDIX-G

The University of Akron is an Equal Education and Employment Institution

The University Akron

Legal Clinic/Appellate Review Office
School of Law
Akron, OH 44325-2901
(330) 972-7751 Office
(330) 258-2343 Fax

July 18, 1996

Timothy J. Mangan, Esquire
Assistant Attorney General
Corrections Litigation Section
140 East Broad Street, 9th Floor
Columbus, Ohio 43215

Re: Prunty vs. Rogers; Case No. 95-CV-7199
Prunty vs. Kervin; Case No. 95-CV-7232
Prunty vs. Brooks; Case No. 95-CV-7308

Dear Mr. Mangan:

I appreciate your help in setting up my meeting with Mr. Prunty on Wednesday, July 17, 1996. I successfully completed the interview and have the following information for you.

Enclosed are copies of some relevant kites and responses regarding Case No. 7199. Mr. Prunty has agreed to have Magistrate Judge Armstrong supervise and try this case.

Mr. Prunty has also authorized me to inform you that he would settle this case for $7,000.00. In fact, he would settle all three of the above-captioned cases for a total of $10,000.00. Please write back to me with your response.

Sincerely,

J. Dean Carro
Attorney at Law
COORDINATOR OF APPELLATE REVIEW

JDC/vsm

Enclosures

APPENDIX-H

cc: Robert E. Prunty

The University of Akron is an Equal Education and Employment Institution

Per Curiam

SUPREME COURT OF THE UNITED STATES

ROBERT E. PRUNTY *v.* W. BROOKS ET AL.

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 99–5316. Decided October 12, 1999

PER CURIAM.

Pro se petitioner Prunty seeks leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request as frivolous pursuant to Rule 39.8. Prunty is allowed until November 2, 1999, within which to pay the docketing fees required by Rule 38 and to submit his petition in compliance with this Court's Rule 33.1. We also direct the Clerk not to accept any further petitions for certiorari from Prunty in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1.

Prunty has abused this Court's certiorari process. On April 19, 1999, we invoked Rule 39.8 to deny Prunty *in forma pauperis* status with respect to a petition for certiorari. See *Prunty* v. *Holschuh*, 526 U. S. __. At that time, Prunty had filed eight petitions for certiorari, all of which were both frivolous and had been denied without recorded dissent. The instant petition for certiorari thus brings Prunty's total number of frivolous filings to 10.

We enter the order barring prospective filings for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Prunty's abuse of the writ of certiorari has been in noncriminal cases, and we limit our sanction accordingly. The order therefore will not prevent Prunty from petitioning to challenge criminal sanctions which might be imposed on him. The order will, however, allow this Court to devote its limited resources to the claims of petitioners who have not abused our processes.

It is so ordered.

JUSTICE STEVENS, dissenting.

For reasons previously stated, see *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1, 4 (1992) (STEVENS, J., dissenting), and cases cited, I respectfully dissent.